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TREATY-RESERVED RIGHTS ON DEPARTMENT OF DEFENSE LANDS

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EXECUTIVE SUMMARY

". . . The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." Treaty with the Yakima, 1855

Background and Purpose

This report identifies Department of Defense (DoD) installation obligations arising from treaties and agreements negotiated by the United States and Indian nations between 1775 and 1954. The DoD installations are defined as those listed in the FY1999 Sikes Act Reporting Data, Defense Environmental Restoration Program Annual Report To Congress For Fiscal Year 1999 ("Sikes Report").

The DoD initiated this study to obtain information essential to efforts to uphold federal legal obligations to Indian tribes and to enhance DoD-tribal relationships.

This report identifies installations in the lower 48 states with legal obligations arising from rights expressly reserved by the tribes in their treaties with the United States. In general, these treaties recognize tribal members' rights to hunt, fish, gather, and otherwise continue longstanding use of lands now occupied by DoD installations. Treaty rights identified in this report exist unless consultation with a tribe, further historical or legal research, or a new United States Supreme Court interpretation of Indian treaty rights proves otherwise.

Treaty-reserved rights are not predicated upon federal recognition or past or present tribal ownership of land. For example, the courts have upheld the treaty rights of a small number of non-federally recognized tribes (*United States v. State of Washington*, 520 F.2d 676 [9th Cir. 1975]). Tribes possessing legally binding rights on DoD installations may therefore include the following:

- Tribes residing near the DoD installation, and
- Tribes that because of relocation now live far from the DoD installation.
- In both instances above, the tribes may or may not be federally recognized.
- In both instances, the tribes may or may not live on federally defined reservations.

Department of Defense responsibilities to tribes are derived from the federal trust doctrine, treaties, executive orders, agreements, statutes, policies, and other legal obligations

between the U.S. government and tribes. Treaty rights are only one component of federal government responsibilities to tribes.

Methodology

A total of 488 treaties and agreements were reviewed and 78 were identified that created potential obligations for existing DoD installations. The geographical extent of the treaty-reserved rights was mapped to identify those rights that overlap with DoD lands (Appendix H lists all maps and treaty sources employed in this research).

The mapping revealed that 118 tribes negotiated 48 treaties that reserved rights on lands that may be occupied by DoD installations. Every treaty subsequently concluded by these 118 tribes was investigated to determine if later treaties extinguished or altered the rights reserved in the original 48 treaties. Next, court decisions were examined to determine the proper interpretation of phrases that possibly extinguished or limited the previously reserved rights (see Chapter Three for research methodology and Appendix E for a summary of pertinent court decisions).

To create the GIS application, maps of DoD installations, reservation lands and treaty land cessions were superimposed, the maps were then linked to relational databases. Users can query maps and data tables to identify tribal, treaty-ceded, aboriginal, and DoD installation lands or to obtain information on treaty-reserved rights applicable to a particular installation.

The study utilized materials publicly available between September 2000 and October 2001. New data and future court decisions on treaty issues may alter project findings.

Findings

After eliminating 7 treaties that contained self-limiting provisions or were inapplicable to this project, 41 treaties containing reserved rights of potential concern to DoD installations remained under consideration. Twenty-two (22) of these treaties reserved rights matched to DoD locations. The remaining 19 reserved rights were of such wide geographical scope that it proved impossible to conclusively establish the boundaries of the rights and correlate them with a DoD installation.

Chapter Four, section one, summarizes information on the 22 treaties, which affect 58 installations in 12 states. In 17 of these 22 treaties, tribes reserved rights within the boundaries of lands ceded in the treaties. The identified DoD installations now occupy these lands.

The remaining 5 of these 22 treaties contain reserved rights that may extend beyond the ceded area of the treaty. For example, the 1855 Treaty with the Dwamish, Suquamish, etc., provides that the "right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands" (12 Stat. 927, Article 5). Working from the assumption that these rights are to be practiced in part on ceded lands, installations located on the lands ceded in each of the 5 treaties were identified. The geographical limits of rights can only be definitively established by consultation with the tribes and further historical research, either of which may indicate other affected installations beyond the ceded land areas.

Chapter Four, section two, presents information on 19 treaties involving 52 tribes and/or tribal subunits who reserved rights of extensive and/or indeterminate boundaries. For example, it was not possible to accurately map the boundaries of the rights reserved in the Treaty with the Kiowa, etc., of 1837, which states that it is "understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber to the western limits of the United States" (7 Stat. 533, Article 4). These 19 treaties vary in their intent and the reservation of rights. Some reserve rights associated with complex boundary lines set forth in the treaties. Others reserve rights in "usual and accustomed places," for which, in contrast to the 5 treaties presented in Chapter Four, section one, no installations were located in the treaty-ceded lands. It is

important to note that federal courts have upheld the rights reserved in some of these treaties. Pertinent legal information is noted under the discussion of the respective treaties.

These treaties entailed a level of historical research and tribal consultation that was beyond the scope of this project. They may, upon further research, be found to affect DoD installations.

Further Research

This report is not intended to provide a single, definitive source for DoD analysis of tribal treaty rights. Instead, the study adds to tools available to installation commanders to assist in meeting federal obligations to tribes and tribal members. A number of issues pertinent to the DoD-tribal relationship were beyond the inherent limitations of this study and could form the basis for future research.

This report presents information on Indian tribes with treaty-reserved rights only, and thus excludes tribes who did not explicitly reserve rights in their treaties, who did not enter into treaty relations with the United States, or whose negotiated treaties were not ratified by Congress. The DoD may also possess treaty on lands not listed in the Sikes Report.

This project focuses on explicitly reserved, land-based, usufructuary rights. It excludes additional rights deriving from treaty obligations or the federal trust relationship, such as:

- The protection and/or preservation of habitat as a component of meeting treaty obligations involving usufructuary rights.
- Consideration of the effects of installation activities on nearby tribal communities and/or the tribal reservation environment.
- Trust responsibilities extending to non-land based rights, such as air and water.
- Tribal access to federal lands provided for in public laws, executive orders, and judicial decisions.

Further research is needed to determine potential DoD obligations, such as those identified above, which were not within the scope of this project.

Report Structure and Content

Chapter One reviews the history of treaty making and the role of the Department of War and later, the Department of Defense, in that history. It also briefly examines the Supreme

Court's procedures for interpreting Indian treaties. Chapter Two details the limitations of the study. Chapter Three presents the research methodology.

Chapter Four, section one, provides a state-by-state, installation-by-installation analysis of DoD treaty responsibilities. Chapter Four, section two, explains the nineteen (19) treaties that have not been conclusively mapped but which may, upon further research and tribal consultation, reveal DoD responsibilities. A tabular summary of the data is presented at the end of each section. The eight appendices, together with the GIS application, provide extensive information on the sources used to arrive at the results of this study

CHAPTER ONE
INDIAN TREATIES: HISTORICAL AND LEGAL CONSIDERATIONS

> "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."
>
> Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville)

General Introduction To Indian Treaties

The treaties negotiated by Indian Nations with the United States are contracts between sovereign nations that serve as an important component of the political relationship between American Indian tribes and the federal government. Indian treaties are governed by the Supremacy Clause of the United States Constitution. They carry the same effect and force of any federal law and supersede state law. States did not–and still do not–possess the requisite sovereignty to enter into treaty relationships.

Through treaties, tribes granted the federal government title to tribal lands and established peaceful relations in exchange for protection, goods, and services. In principle, tribes retain all rights not specifically ceded to the federal government in treaties. This project focuses on those usufructuary rights which were in fact specifically reserved in the treaty language. These treaty rights are tribal rights reserved by the tribes, not a grant of rights from the United States to the tribes, and must be specifically extinguished by Congress.

Societal relations and federal and tribal governmental structures have changed significantly in the more than 200 years since the parties negotiated their first treaties. The treaties, however, continue as documents of enormous cultural significance and political importance in the ongoing tribal and federal government-to-government relationship.

The History of Treaty Making in the United States

Prior to the formation of the United States, Indian nations negotiated treaties with representatives of France, Spain, England, and the American colonies, all of whom competed to win the military support of tribes in wars over the territory of the New World. With the Articles of Confederation (1781), Congress asserted its exclusive right to regulate trade, manage Indian affairs, and negotiate treaties of war or peace with the Indian nations. Under the Constitution

(1789), this control expanded to include the purchase of land through treaties: it gave the President the sole power to negotiate treaties, which became effective upon approval of at least two-thirds of the Senate.

The federal government often negotiated multiple treaties with individual tribes over the years, and also concluded single treaties with several tribes or bands. The United States government negotiated more than 500 treaties with tribes before 1871, but did not conclude treaties with every tribe. Many of the 559 current federally recognized tribes have no existing treaty relationship with the federal government, either because the tribes did not negotiate treaties with the United States or because Congress failed to ratify certain tribal treaties. For example, the California tribes negotiated treaties with the U.S. government, but Congress failed to ratify the majority of them. None of Pueblos of New Mexico and Alaska's 226 current tribal governments negotiated treaties with the United States.

Treaty Objectives and Effects

Each tribe possesses its own distinct treaty provisions, history, and relationship with the federal government. Because each tribe's treaty history is unique, any generalization about the hundreds of treaties the Indian nations negotiated with the United States does not capture the complexities of the process for individual tribes. Readers are advised to consult the sources listed in the Bibliography for more detailed discussions of the treaty-making process.

Treaty negotiations with individual tribes often followed a typical cycle, beginning in the east during the early years of the republic and gradually spreading westward as the United States became more powerful. Treaties proclaiming peace, friendship, and alliance were followed by treaties ceding lands. White settlers began to trespass on the remaining tribal lands, and new treaties were negotiated for tribal cession of increasing amounts of land. Eventually, the government, under the Indian Removal policies of the 1830s, removed many of the eastern tribes west of the Mississippi to the Indian Territory (which, in 1907, the federal government removed from Indian ownership to create the state of Oklahoma). As early as the 1850s, the government pressured a few tribes to sign treaties—and, later, agreements—allotting communally held lands to individual owners and requiring tribal members to send their children to manual labor schools.

At the same time the process was beginning anew with the tribes of the Plains and the West, who were still powerful enough to resist the incursions of white settlers and treaty

negotiators. But the discovery of gold in California (1849) and Colorado (1858) resulted in the increasing illegal settlement of Indian lands by non-Indians, and by the end of the 1860s the government had confined many of the western tribes to small reservations on their original lands or moved them to reservations on new, unfamiliar territory. Policy makers of the time envisioned reservations as temporary homes for the tribes, where Indians would be educated in the ways of white society, abandon their tribal culture and allegiance, and leave the reservations and merge into the larger society—thereby ending any federal obligations to the Indians.

Congress declared an end to the treaty-making process in 1871. The federal government continued establishing reservations and obtaining tribal lands by statute, executive order, and agreements with tribes. Agreements were similar to treaties in content and effect, but required ratification by both houses of Congress before being signed into law by the President.

By the early 20th century, as a result of general federal Indian policy, Indian tribes in the United States had reached a point of near-total destruction in terms of organization, strength, land, and population. Since, then, tribes have slowly regained much of their former vitality. Tribes today are recognized by the courts and Congress as domestic dependent nations possessing a government-to-government relationship with the federal government—a status supported by the continuing viability of Indian treaties.

Treaty Negotiations And Canons Of Construction

Modern courts have recognized that the treaty process must be viewed with an eye toward the cultural divide between representatives of the tribes and the federal government. Tribes, especially in later years, were often at a considerable disadvantage during the treaty negotiation process. Federal negotiators were unfamiliar with tribal political structures, which often led to a confusion–sometimes deliberate–over who were the proper representatives of a tribe. This confusion provided ample opportunity for those dishonest officials eager to obtain signatures at any cost: they simply appointed pliant tribal members as "chiefs," offered bribes, and negotiated treaties with them. Negotiators wrote the treaties in English, translating them orally into the native tongue. Problems with accurate translations occurred at nearly all treaty councils; only rarely were interpreters not required because tribal negotiators spoke English (Prucha 1994:214).

At times, negotiators and Indian agents threatened to withhold rations or annuities owed by earlier treaties until the tribe agreed to the terms of a new one. Frequently a tribe's only means to overcome a threat of war, starvation, or other dire consequence was to consent to a treaty. Negotiating under duress, tribes concluded treaties to protect their lands, people, resources, and cultural survival. In addition, tribes often honored their end of negotiated treaties without being informed by government representatives that the Senate had struck out provisions, added new ones, or refused to ratify the treaty and compensate the tribe for their land cessions. It was only in rare cases that Congress notified the tribes of changes made to treaties. But in at least 13 instances, tribes, learning that Congress had altered the terms of the treaty, rejected the treaty when it was returned to them for approval (Deloria and DeMallie 1999:1018).

To compensate for the inequality of the negotiation process, modern courts have established Canons of Construction for Indian treaty interpretations (see *Carpenter v. Shaw,* 280 U.S. 363, 367 [1930]; *DeCoteau v. District Court,* 420 U.S. 425, 447 [1975]; *Bryan v. Itasca County, Minnesota,* 426 U.S. 373, 392 [1976]; *Jones v. Meehan,* 175 U.S. 1, 10 [1899]; *U.S. v. Shoshone Tribe,* 304 U.S. 111, 116 [1938]; *Choctaw Nation v. Oklahoma,* 397 U.S. 620, 631 [1970]; *Tulee v. Washington,* 315 U.S. 681, 684-685 [1942]; *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n,* 443 U.S. 658, 690 [1979]; and *County of Oneida v. Oneida Indian Nation,* 470 U.S. 226, 247 [1985]). These Canons of Construction set forth the principles that:

- Ambiguities in treaties must be resolved in favor of the tribes.
- Indian treaties must be interpreted as the Indians would have understood them.
- Indian treaties must be construed liberally in favor of the Indians.
- Reserved rights must be explicitly extinguished by either later treaties or Congressional action.

These canons are intended to protect tribes and interpret treaties from a tribal perspective. For example, in *State v. Tinno* (94 Idaho 759 [1972]), the Idaho Supreme Court held that the explicit treaty reservation of hunting rights also, by implication, reserved fishing rights. The court determined that at the time of the treaty's negotiation, the tribal language did not contain separate terms for fishing and hunting.

The U.S. Supreme Court, as recently as the 1999 *Minnesota v. Mille Lacs* decision, emphasized that each tribe, tribal history, and negotiated treaty is unique (526 U.S. 172). (See Chapter Three for a discussion of the case.) To properly interpret a particular treaty requires in-

depth historical investigation of the era when the tribe negotiated the treaty including, but not limited to, an examination of government policy, archival records of congressional debates and treaty negotiations, and tribal oral and written histories. One should assume that all treaty-reserved rights continue to exist unless clear documentation is found to support the extinguishment of those rights.

The Role of the Military

Today's Department of Defense, as the successor to the War Department, is the inheritor of past policies and actions which continue to play a significant symbolic and political role in the lives of the today's tribal members—the descendants of those people whose involvement with the military was often violent and tragic. An understanding of the historical relationship between the military and Indian tribes provides insight into the significance of the DoD role in Indian Country today.

Over time, the U.S. military vacillated between being the sole protector of the tribes and their worst enemy. Congress authorized the War Department to manage federal-tribal relations in 1786, and the Indian Office (the precursor to the Bureau of Indian Affairs) was an agency within the War Department from 1824 to 1849. At first, the military's primary role was to enforce the treaty-established boundaries between Indian and white lands. As white settlers encroached on tribal lands, and the tribes retaliated against the incursions, the Army's role became one of suppressing the tribes and often evicting them from their own lands. Between 1866 and 1890, the tribes defended and protected their lands, resources, and cultures in more than 1,000 Indian Wars fought against the U.S. military.

During the assimilation era, the military presence on some reservations served to enforce federal Indian policies directed toward the eradication of Indian culture. These policies included banning traditional religious and cultural ceremonies and arresting their practitioners; forcing tribal members encamped outside reservation boundaries—who sometimes possessed treaty rights to do so—to return to the reservation; and, as late as the 1930s, rounding up children to be sent to off-reservation boarding schools, where they grew up separated from their families and tribal cultures.

Despite the complexities of the relationship between Indians and the U.S. military, Indian men and women currently have the highest record of military service per capita of any ethnic

population in the United States. Indians have fought in every American war, including the Revolutionary and Civil Wars. And even though the federal government did not grant American citizenship to tribal members until 1924, 12,000 Indians enlisted and fought in World War I. Forty-four thousand Indians served in the military in World War II, in an era when the total U.S. Indian population was estimated at less than 350,000. More than 42,000 Indians served in Vietnam; of those, more than 90 percent enlisted. Today, there are nearly 190,000 Indian military veterans who served the United States with "pride, courage, and distinction" (Naval Historical Center 1996).

CHAPTER FOUR
RESEARCH FINDINGS

". . . The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: Provided, however, That they shall not take shellfish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter." Treaty with the Nisqualli, Puyallup, etc., 1854

Section One: DoD Installations Affected by Treaty-Reserved Rights

This section identifies DoD installations affected by treaty-reserved rights and presents information on the treaties of interest to each installation. Results are presented alphabetically by state, then installation. These treaty rights affect a total of 58 installations. Seventy-four (74) tribes and/or tribal subunits were signatories to the 22 treaties affecting these installations.

Seventeen (17) of these 22 treaties reserve rights only on lands the tribes ceded to the United States in the treaty. For example, the 1816 Treaty with the Ottawa, etc., provides that the "said tribes shall be permitted to hunt and fish within the limits of the land hereby relinquished and ceded, so long as it may continue to be the property of the United States" (7 Stat. 146, Article 1). The installations that now occupy those treaty-ceded lands fall into the following nine states:

1. Alabama
2. Arkansas
3. Illinois
4. Indiana
5. Michigan
6. Minnesota
7. Nebraska
8. Ohio
9. Oklahoma

The remaining 5 of the above 22 treaties reserve rights that may expand beyond ceded territory. For example, the 1855 Treaty with the Dwamish, Suquamish, etc., provides that the "right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands" (12 Stat. 927, Article 5). Working from the assumption that these rights were located in part on the lands ceded in the treaties, installations located on those lands were

identified. Tribal consultation and further research may extend the geographical scope of the rights beyond the installations listed for this treaty and incorporate installations not presently listed. At present, these treaties affect installations in three states: Oregon, Utah, and Washington.

This section concludes with Table 1, "Installations Affected by Treaty-Reserved Rights," which summarizes the data for these 22 treaties and 58 installations.

Redstone Arsenal, Alabama

Right(s): Tribe retains hunting rights on ceded lands.

Treaty: Treaty with the Cherokee, 1806, 7 Stat. 101 and 7 Stat. 103.

Treaty Tribe(s): Cherokee.

Treaty Stipulation of Rights: Treaty Elucidation, 7 Stat. 103: "WHEREAS, by the first article of a convention between the United States and the Cherokee nation, entered into at the city of Washington, on the seventh day of January, one thousand eight hundred and six. . . .. the executive of the United States will direct. . . that the Cherokee hunters' as hath been the custom in such cases, may hunt on said ceded tract, until by the fullness of settlers it shall become improper. And it is hereby declared by the parties, that this explanation ought to be considered as a just elucidation of the cession made by the first article of said convention."

Additional Information

Map Reference: See *Alabama* Royce map in Appendix C. Installation falls within map cession number 64.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 64; See 85~See 86-65.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have not considered the phrasing "until by the fullness of settlers it shall become improper." The apparent intent is similar to that of the reservation of rights on "open and unclaimed lands," which the courts have inconsistently interpreted. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]) and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation*, (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]). The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Camp Robinson, Arkansas

Right(s): Tribe retains the right to hunt on ceded land until U.S. assigns to other Indians.

Treaty: Treaty With the Quapaw, 1818, 7 Stat. 176.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "It is agreed, between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably and offer no injury or annoyance to any of the citizens of the United States, and until the said United States may think proper to assign the same, or any portion thereof, as hunting grounds to other friendly Indians."

Additional Information

Map Reference: See *Arkansas 1* Royce map in Appendix C. Installation falls within map cession number 94.

All Installations Listed for this Treaty: Fort Chaffee, Arkansas; Camp Robinson, Arkansas; Fort Smith AGS, Arkansas; Little Rock AFB, Arkansas; and Altus AFB, Oklahoma.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 94~See 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Nno indication that other tribes were later settled on the land in question; therefore, these rights are assumed to be extant.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Fort Chaffee, Arkansas

Right(s): Tribe retains the right to hunt on ceded land until U.S. assigns to other Indians.

Treaty: Treaty With the Quapaw, 1818, 7 Stat. 176.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "It is agreed, between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably and offer no injury or annoyance to any of the citizens of the United States, and until the said United States may think proper to assign the same, or any portion thereof, as hunting grounds to other friendly Indians."

Additional Information

Map Reference: See *Arkansas 1* Royce map in Appendix C. Installation falls within map cession number 94.

All Installations Listed for this Treaty: Fort Chaffee, Arkansas; Camp Robinson, Arkansas; Fort Smith AGS, Arkansas; Little Rock AFB, Arkansas; and Altus AFB, Oklahoma.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 94~See 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): No indication found that other tribes were later settled on the land in question; therefore, these rights are assumed to be extant.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Fort Smith AGS, Arkansas

Right(s): Tribe retains the right to hunt on ceded land until U.S. assigns to other Indians.

Treaty: Treaty With the Quapaw, 1818, 7 Stat. 176.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "It is agreed, between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably and offer no injury or annoyance to any of the citizens of the United States, and until the said United States may think proper to assign the same, or any portion thereof, as hunting grounds to other friendly Indians."

Additional Information

Map Reference: See *Arkansas 1* Royce map in Appendix C. Installation falls within map cession number 94.

All Installations Listed for this Treaty: Fort Chaffee, Arkansas; Camp Robinson, Arkansas; Fort Smith AGS, Arkansas; Little Rock AFB, Arkansas; and Altus AFB, Oklahoma.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 94~See 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): No indication found that other tribes were later settled on the land in question; therefore, these rights are assumed to be extant.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Little Rock AFB, Arkansas

Right(s): Tribe retains the right to hunt on ceded land until U.S. assigns to other Indians.

Treaty: Treaty With the Quapaw, 1818, 7 Stat. 176.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "It is agreed, between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably and offer no injury or annoyance to any of the citizens of the United States, and until the said United States may think proper to assign the same, or any portion thereof, as hunting grounds to other friendly Indians."

Additional Information

Map Reference: See *Arkansas 1* Royce map in Appendix C. Installation falls within map cession number 94.

All Installations Listed for this Treaty: Fort Chaffee, Arkansas; Camp Robinson, Arkansas; Fort Smith AGS, Arkansas; Little Rock AFB, Arkansas; and Altus AFB, Oklahoma.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 94~See 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): No indication found that other tribes were later settled on the land in question; therefore, these rights are assumed to be extant.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Pine Bluff Arsenal, Arkansas

Right(s): Tribe retains the right to hunt on ceded land.

Treaty: Treaty with the Quapaw, 1824, 7 Stat. 232.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "The United States hereby guaranty to the said Nation of Indians, the same right to hunt on the lands by them hereby ceded, as was guarantied to them by a Treaty, concluded at St. Louis, on the 24th of August, 1818, between the said Quapaw Nation of Indians and William Clark and Auguste Choteau, Commissioners on the part of the United States."

Additional Information

Map Reference: See *Arkansas 1* Royce map in Appendix C. Installation falls within map cession number 121.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Camp Marseilles, Illinois

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1816, 7 Stat. 146.

Treaty Tribe(s): Chippewa, Ottawa, and Potawatomi.

Treaty Stipulation of Rights: Article 1: "….Provided, nevertheless, That the said tribes shall be permitted to hunt and fish within the limits of the land hereby relinquished and ceded, so long as it may continue to be the property of the United States."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 78.

All Installations Listed for this Treaty: Joliet AAP, Illinois; Greater Peoria AGS, Illinois; and Camp Marseilles, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 77~78~See 147~78a.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Charles Melvin Price SPT Ctr, Illinois

Right(s): Tribe retains right to live and hunt upon ceded land.

Treaty: Treaty with the Kaskaskia, 1803, 7 Stat. 78.

Treaty Tribe(s): Kaskaskia (Cahokia, Illinois Nation, Mitchigamia, Tamarois now a part of the Kaskaskia).

Treaty Stipulation of Rights: Article 6: "As long as the lands which have been ceded by this treaty shall continue to be the property of the United States, the said tribe shall have the privilege of living and hunting upon them in the same manner that they have hitherto done."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 48.

All Installations Listed for this Treaty: Charles Melvin Price SPT Ctr, Illinois; and Scott AFB, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 48.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Chicago ARS, Illinois

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Illinois 1 and Illinois 2* Royce map in Appendix C. Installation falls within map cession number 24.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally,

and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: “Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.”

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: “The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . .”

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Greater Peoria AGS, Illinois

Right(s): Hunting and fishing on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1816, 7 Stat. 146.

Treaty Tribe(s): Chippewa, Ottawa, and Potawatomi.

Treaty Stipulation of Rights: Article 1: "….Provided, nevertheless, That the said tribes shall be permitted to hunt and fish within the limits of the land hereby relinquished and ceded, so long as it may continue to be the property of the United States."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 77.

All Installations Listed for this Treaty: Joliet AAP, Illinois; Greater Peoria AGS, Illinois; and Camp Marseilles, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 77~78~See 147~78a.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Joliet AAP, Illinois

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1816, 7 Stat. 146.

Treaty Tribe(s): Chippewa, Ottawa, and Potawatomi.

Treaty Stipulation of Rights: Article 1: "….Provided, nevertheless, That the said tribes shall be permitted to hunt and fish within the limits of the land hereby relinquished and ceded, so long as it may continue to be the property of the United States."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 78.

All Installations Listed for this Treaty: Joliet AAP, Illinois; Greater Peoria AGS, Illinois; and Camp Marseilles, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 77~78~See 147~78a.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Rock Island Arsenal, Illinois

Right(s): Tribes retain right to live and hunt upon ceded land.

Treaty: Treaty with the Sauk and Foxes, 1804, 7 Stat. 84.

Treaty Tribe(s): Sauk and Foxes.

Treaty Stipulation of Rights: Article 7: "as long as the lands which are now ceded to the United States remain their property, the Indians belonging to the said tribes, shall enjoy the privilege of living and hunting upon them."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 50.

All Installations Listed for this Treaty: Rock Island Arsenal, Illinois; and Savanna Depot ACT, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 50~1.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Sauk and Foxes, 1842 (7 Stat.596), Article 1 cedes "all the lands west of the Mississippi river, to which they have any claim or title, or in which they have any interest whatever. . ."

Treaty with the Sauk and Foxes of Missouri, 1854 (10 Stat.1074), Article 6: "The said Indians release the United States from all claims or demands of any kind whatsoever arising, or which may hereafter arise, under former treaties."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Savanna Depot ACT, Illinois

Right(s): Tribes retain right to live and hunt upon ceded land.

Treaty: Treaty with the Sauk and Foxes, 1804, 7 Stat. 84.

Treaty Tribe(s): Sauk and Foxes.

Treaty Stipulation of Rights: Article 7: "as long as the lands which are now ceded to the United States remain their property, the Indians belonging to the said tribes, shall enjoy the privilege of living and hunting upon them."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 50.

All Installations Listed for this Treaty: Rock Island Arsenal, Illinois; and Savanna Depot ACT, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 50~1.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Sauk and Foxes, 1842 (7 Stat.596), Article 1 cedes "all the lands west of the Mississippi river, to which they have any claim or title, or in which they have any interest whatever. . ."

Treaty with the Sauk and Foxes of Missouri, 1854 (10 Stat.1074), Article 6: "The said Indians release the United States from all claims or demands of any kind whatsoever arising, or which may hereafter arise, under former treaties."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Scott AFB, Illinois

Right(s): Tribe retains right to live and hunt upon ceded land.

Treaty: Treaty with the Kaskaskia, 1803, 7 Stat. 78.

Treaty Tribe(s): Kaskaskia (Cahokia, Illinois Nation, Mitchigamia, Tamarois now a part of the Kaskaskia).

Treaty Stipulation of Rights: Article 6: "As long as the lands which have been ceded by this treaty shall continue to be the property of the United States, the said tribe shall have the privilege of living and hunting upon them in the same manner that they have hitherto done."

Additional Information

Map Reference: See *Illinois 1* Royce map in Appendix C. Installation falls within map cession number 48.

All Installations Listed for this Treaty: Charles Melvin Price SPT Ctr, Illinois; and Scott AFB, Illinois.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 48.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Crane Div, NAV Surface Warfare Ctr, Indiana

Right(s): Tribes retain hunting rights on ceded lands.

Treaty: Treaty with the Delawares, Etc., 1809, 7 Stat. 113.

Treaty Tribe(s): Delawares, Eel River, Miami, Potawatomi.

Treaty Stipulation of Rights: Article 4: "All the stipulations made in the treaty of Greenville, relatively to the manner of paying the annuities, and the right of the Indians to hunt upon the land, shall apply to the annuities granted and the land ceded by the present treaty."

Additional Information

Map Reference: See *Indiana* Royce map in Appendix C. Installation falls within map cession number 71.

All Installations Listed for this Treaty: Newport Chem Activity, Indiana; Crane Div, NAV Surface Warfare Ctr., Indiana; and Hulman AGS, Indiana.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 71~72~73.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

FT Wayne AGS, Indiana

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Indiana (detail)* Royce map in Appendix C. Installation falls within map cession number 16.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in

addition to their above described cessions, do hereby cede and relinquish to the United States, generally, and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: “Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.”

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: “The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . .”

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Hulman AGS, Indiana

Right(s): Tribes retain hunting rights on ceded lands.

Treaty: Treaty with the Delawares, Etc., 1809, 7 Stat. 113.

Treaty Tribe(s): Delawares, Eel River, Miami, Potawatomi.

Treaty Stipulation of Rights: Article 4: "All the stipulations made in the treaty of Greenville, relatively to the manner of paying the annuities, and the right of the Indians to hunt upon the land, shall apply to the annuities granted and the land ceded by the present treaty."

Additional Information

Map Reference: See *Indiana* Royce map in Appendix C. Installation falls within map cession number 71.

All Installations Listed for this Treaty: Newport Chem Activity, Indiana; Crane Div, NAV Surface Warfare Ctr., Indiana; and Hulman AGS, Indiana.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 71~72~73.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Indiana AAP, Indiana

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.

Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Illinois 1 and Illinois 2* Royce map in Appendix C. Installation falls within map cession number 25.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally, and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . ."

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: "The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…"

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : "The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes."

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: "The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . ."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Newport Chem Activity, Indiana

Right(s): Tribes retain hunting rights on ceded lands.

Treaty: Treaty with the Delawares, Etc., 1809, 7 Stat. 113.

Treaty Tribe(s): Delawares, Eel River, Miami, Potawatomi.

Treaty Stipulation of Rights: Article 4: "All the stipulations made in the treaty of Greenville, relatively to the manner of paying the annuities, and the right of the Indians to hunt upon the land, shall apply to the annuities granted and the land ceded by the present treaty."

Additional Information

Map Reference: See *Indiana* Royce map in Appendix C. Installation falls within map cession number 71.

All Installations Listed for this Treaty: Newport Chem Activity, Indiana; Crane Div, NAV Surface Warfare Ctr., Indiana; and Hulman AGS, Indiana.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 71~72~73.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Camp Custer, Michigan

Right(s): Tribe retains the right to hunt and make sugar on ceded lands.

Treaty: Treaty with the Chippewa, 1819, 7 Stat. 203.

Treaty Tribe(s): Chippewa.

Treaty Stipulation of Rights: Article 5: "The stipulation contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 111.

All Installations Listed for this Treaty: Camp Custer, Michigan; and W.K. Kellogg AGS, Michigan.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 111~See 227~See 228~See229~ See230~See231~See232~See233~See234~See235~See236~See341~See237~ See 238~See 239~See 240~112.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Camp Grayling, Michigan

Right(s): Tribe retains right to hunt on ceded lands.

Treaty: Treaty with the Ottawa, etc., 1836, 7 Stat. 491 and 7 Stat. 496.

Treaty Tribe(s): Chippewa, Ottawa.

Treaty Stipulation of Rights: Article 13: "The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 205.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 205~206~207.

***Court Decisions on These Treaty Rights:**
United States v. Michigan, 471 F. Supp. 192 (1979)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): *United States v. Michigan* (471 F. Supp. 192 [1979]) upheld these treaty rights specifically for fishing.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Detroit Arsenal, Michigan

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1807, 7 Stat. 105.

Treaty Tribe(s): Chippewa, Ottawa, Potawatomi, Wyandot.

Treaty Stipulation of Rights: Article 5: "It is further agreed and stipulated, that the said Indian nations shall enjoy the privilege of hunting and fishing on the lands ceded as aforesaid, as long as they remain the property of the United States."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 66.

All Installations Listed for this Treaty: Detroit Arsenal, Michigan; US Army Garrison Selfridge, Michigan; and Selfridge AGB, Michigan.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 66~See 169~See 170~See 183~See 89 and 137~See 135~See 136~See 214, 215, 216, 217.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
CHIPPEWA: Treaty With the Chippewa, Etc., 1859 (12 Stat. 1105), Article 4: " In consideration of the provisions contained in the several articles of this treaty, the aforesaid band of Swan Creek and Black River Chippewas hereby relinquish all claims and demands which they may have against the United States, under the stipulations of the treaty of November 17, 1807, and the treaty of May 9, 1836; and they hereby abandon and renounce any and all claims to participate in the provisions of the subsequent treaty of August 2, 1855, and they receive the stipulations and provisions contained in these articles of agreement and convention, in full satisfaction of the terms and conditions of all former treaties, and release the United States from the payment of all claims of every character whatsoever."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Selfridge AGB, Michigan

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1807, 7 Stat. 105.

Treaty Tribe(s): Chippewa, Ottawa, Potawatomi, Wyandot.

Treaty Stipulation of Rights: Article 5:: "It is further agreed and stipulated, that the said Indian nations shall enjoy the privilege of hunting and fishing on the lands ceded as aforesaid, as long as they remain the property of the United States."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 66.

All Installations Listed for this Treaty: Detroit Arsenal, Michigan; US Army Garrison Selfridge, Michigan; and Selfridge AGB, Michigan.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 66~See 169~See 170~See 183~See 89 and 137~See 135~See 136~See 214, 215, 216, 217.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
CHIPPEWA: Treaty With the Chippewa, Etc., 1859 (12 Stat. 1105), Article 4: " In consideration of the provisions contained in the several articles of this treaty, the aforesaid band of Swan Creek and Black River Chippewas hereby relinquish all claims and demands which they may have against the United States, under the stipulations of the treaty of November 17, 1807, and the treaty of May 9, 1836; and they hereby abandon and renounce any and all claims to participate in the provisions of the subsequent treaty of August 2, 1855, and they receive the stipulations and provisions contained in these articles of agreement and convention, in full satisfaction of the terms and conditions of all former treaties, and release the United States from the payment of all claims of every character whatsoever."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

US Army Garrison Selfridge, Michigan

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Ottawa, Etc., 1807, 7 Stat. 105.

Treaty Tribe(s): Chippewa, Ottawa, Potawatomi, Wyandot.

Treaty Stipulation of Rights: Article 5: "It is further agreed and stipulated, that the said Indian nations shall enjoy the privilege of hunting and fishing on the lands ceded as aforesaid, as long as they remain the property of the United States."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 66.

All Installations Listed for this Treaty: Detroit Arsenal, Michigan; US Army Garrison Selfridge, Michigan; and Selfridge AGB, Michigan.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 66~See 169~See 170~See 183~See 89 and 137~See 135~See 136~See 214, 215, 216, 217.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
CHIPPEWA: Treaty With the Chippewa, Etc., 1859 (12 Stat. 1105), Article 4: " In consideration of the provisions contained in the several articles of this treaty, the aforesaid band of Swan Creek and Black River Chippewas hereby relinquish all claims and demands which they may have against the United States, under the stipulations of the treaty of November 17, 1807, and the treaty of May 9, 1836; and they hereby abandon and renounce any and all claims to participate in the provisions of the subsequent treaty of August 2, 1855, and they receive the stipulations and provisions contained in these articles of agreement and convention, in full satisfaction of the terms and conditions of all former treaties, and release the United States from the payment of all claims of every character whatsoever."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

W.K. Kellogg AGS, Michigan

Right(s): Tribe retains the right to hunt and make sugar on ceded lands.

Treaty: Treaty with the Chippewa, 1819, 7 Stat. 203.

Treaty Tribe(s): Chippewa.

Treaty Stipulation of Rights: Article 5: "The stipulation contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees."

Additional Information

Map Reference: See *Michigan 1* Royce map in Appendix C. Installation falls within map cession number 111.

All Installations Listed for this Treaty: Camp Custer, Michigan; and W.K. Kellog AGS, Michigan.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 111~See 227~See 228~See229~ See230~See231~See232~See233~See234~See235~See236~See341~See237~ See 238~See 239~See 240~112.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Camp Ripley, Minnesota

Right(s): Tribe retain rights to hunt, fish, and rice on ceded lands and waters.

Treaty: Treaty with the Chippewa, 1837, 7 Stat. 536.

Treaty Tribe(s): Chippewa.

Treaty Stipulation of Rights: Article 5: "The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians, during the pleasure of the President of the United States."

Additional Information

Map Reference: See *Minnesota 1* Royce map in Appendix C. Installation falls within map cession number 242.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 242.

***Court Decisions on These Treaty Rights:**
Minnesota v. Mille Lacs, 526 U.S. 172 (1999)
Lac Courte Oreilles v. Voight, 700 F.2d 341 (7th Cir.1983)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The court in *Minnesota v. Mille Lacs* ruled that Chippewa bands retain these hunting, fishing, and gathering rights on Minnesota lands. In *Lac Courte Oreilles v. Voight*, the court upheld these rights in Wisconsin.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Duluth AGS, Minnesota

Right(s): Tribe retains right to hunt and fish on ceded lands.

Treaty: Treaty with the Chippewa, 1854, 10 Stat. 1109.

Treaty Tribe(s): Chippewa of Lake Superior and the Mississippi.

Treaty Stipulation of Rights: Article 11: " All annuity payments to the Chippewas of Lake Superior, shall hereafter be made at L'Anse, La Pointe, Grand Portage, and on the St. Louis River; and the Indians shall not be required to remove from the homes hereby set apart for them. And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President."

Additional Information

Map Reference: See *Minnesota 1* Royce map in Appendix C. Installation falls within map cession number 332.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 332 through 342.

***Court Decisions on These Treaty Rights:**
Lac Courte Oreilles v. Voight, 700 F.2d 341 (7th Cir.1983) confirms these rights in Wisconsin.
People v. Jondreau, 384 Mich. 539 (Michigan Supreme Court, 1971), affirms fishing rights in Michigan.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): These rights have been upheld in Minnesota via a 1988 out-of-court settlement between the state of Minnesota and the Bois Forte, Grand Portage, and Fond du Lac bands. Under the agreement, the bands agreed to limit the exercise of certain off-reservation rights in return for an annual monetary payment from the State of Minnesota.

The 1854 Authority, based in Duluth, MN, is the treaty-rights agency of the Bois Forte and Grand Portage Bands. The Fond du Lac band is a member of the Great Lakes Indian Fish and Wildlife Commission.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Mpls-St. Paul IAP AGS, Minnesota

Right(s): Sioux retain the right to hunt, pass through, and make "other uses" of ceded land.

Treaty: Treaty with the Sioux, 1805,
Treaty Tribe(s): Medawakanton Sioux.

Treaty Stipulation of Rights: Article 3: "The United States promise on their part to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception, but those specified in article first."

Additional Information

Map Reference: Royce did not provide maps for this treaty, although he did give a written summary of the cession..

All Installations Listed for this Treaty: No others listed.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Our sources disagree about the validity of this treaty. Deloria and DeMallie argue for its addition to a listing of ratified treaties, while Prucha argues for omission. It is included in this treaty list because the Indian Claims Commission (10 Ind. Cl. Comm. 137, Docket No. 361) accepts this treaty as the basis for establishing Medawakanton Sioux aboriginal ownership of the tract ceded in the treaty. The Commission discusses the treaty extensively but does not address its legality. Since the Courts have used this treaty as evidence in legal proceedings, this report considers its provisions to be binding.

Consultation with the Medawakanton Sioux as to the continued validity of the reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Sioux, 1858 (12 Stat.1031). (Mendawakanton and Wahpahoota bands) See final paragraph, after signatures: "By the first section of the act of February 16, 1863, 12th Statutes at Large, page 652, it is provided as follows: That all treaties heretofore made and entered into by the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux or Dakota Indians, or any of them, with the United States, are hereby declared to be abrogated and annulled, so far as said treaties or any of them purport to impose any future obligation on the United States, and all lands and rights of occupancy within the State of Minnesota, and all annuities and claims heretofore accorded to said Indians, or any of them, to be forfeited to the United States"

The opinion of the ICC cites a Senate discussion of the Act of 1863 as recognizing no future U.S. obligations from former treaties, but does not discuss the nature of "obligation" and does not mention hunting rights. The impact of the 1863 provision on the rights under the 1805 treaty is unclear and may depend upon an interpretation of the word "obligation."

Camp Hastings, Nebraska

Right(s): Common hunting ground.

Treaty: Treaty with the Pawnee, 1833, 7 Stat. 448.

Treaty Tribe(s): Pawnee.

Treaty Stipulation of Rights: Article II: "The land ceded and relinquished hereby, so far as the same is not and shall not be assigned to any tribe or tribes, shall remain a common hunting ground, during the pleasure of the President, for the Pawnees and other friendly Indians, who shall be permitted by the President to hunt on the same."

Additional Information

Map Reference: See *Nebraska* Royce map in Appendix C. Installation falls within map cession number 191.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 191.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): These rights appear to be dependent upon whether the government ultimately assigned the land in question to other tribes. Further research is required to determine if such land transfers occurred prior to the construction of the DoD installation.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Pawnee, 1857 (11 Stat.729), Article 1: "The confederate bands of the Pawnees aforesaid, hereby cede and relinquish to the United States all their right, title, and interest in and to all the lands now owned or claimed by them, except as hereinafter reserved…"(Grand Pawnees, Pawnee Loups, Pawnee Republicans, and Pawnee Tappahs). Article 12: "To enable the Pawnees to settle any just claims at present existing against them, there is hereby set apart, by the United States, ten thousand dollars, out of which the same may be paid, when presented, and proven to the satisfaction of the proper department; and the Pawnees hereby relinquish all claims they may have against the United States under former treaty stipulations."

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Camp Perry, Ohio

Right(s): Tribes retain the right of hunting and making sugar on ceded lands.

Treaty: Treaty with the Wyandot, Etc., 1817, 7 Stat. 160.

Treaty Tribe(s): Chippewa, Delawares, Ottawa, Potawatomi, Seneca, Shawnee, Wyandot.

Treaty Stipulation of Rights: Article 11: "The stipulations contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land hereby ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees."

Additional Information

Map Reference: See *Ohio and Ohio (detail)* Royce map in Appendix C. Installation falls within map cession number 87.

All Installations Listed for this Treaty: Lima Army Tank Plant, Ohio; Camp Perry, Ohio; and Camp Perry AGS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 87~88~See 211 and 259~See 212~See 163~See 165~See 166~See 164~See 167~See 168~89~90, 91~See 150~See 182.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Camp Perry AGS, Ohio

Right(s): Tribes retain the right of hunting and making sugar on ceded lands.

Treaty: Treaty with the Wyandot, Etc., 1817, 7 Stat. 160.

Treaty Tribe(s): Chippewa, Delawares, Ottawa, Potawatomi, Seneca, Shawnee, Wyandot.

Treaty Stipulation of Rights: Article 11: "The stipulations contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land hereby ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees."

Additional Information

Map Reference: See *Ohio and Ohio (detail)* Royce map in Appendix C. Installation falls within map cession number 87.

All Installations Listed for this Treaty: Lima Army Tank Plant, Ohio; Camp Perry, Ohio; and Camp Perry AGS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 87~88~See 211 and 259~See 212~See 163~See 165~See 166~See 164~See 167~See 168~89~90, 91~See 150~See 182.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

DEF Construction Supply Center, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty:
11~12~13~14~15~16~17~18~19~20~21~22~23~24~25~26~27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in

addition to their above described cessions, do hereby cede and relinquish to the United States, generally, and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: “Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.”

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: “The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . .”

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Gentile DEF Electronic Supply, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally,

and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: “Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.”

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: “The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . .”

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Lima Army Tank Plant, Ohio

Right(s): Tribes retain the right of hunting and making sugar on ceded lands.

Treaty: Treaty with the Wyandot, Etc., 1817, 7 Stat. 160.

Treaty Tribe(s): Chippewa, Delawares, Ottawa, Potawatomi, Seneca, Shawnee, Wyandot.

Treaty Stipulation of Rights: Article 11: "The stipulations contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land hereby ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees."

Additional Information

Map Reference: See *Ohio a*nd Ohio (detail) Royce map in Appendix C. Installation falls within map cession number 87.

All Installations Listed for this Treaty: Lima Army Tank Plant, Ohio; Camp Perry, Ohio; and Camp Perry AGS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 87~88~See 211 and 259~See 212~See 163~See 165~See 166~See 164~See 167~See 168~89~90, 91~See 150~See 182.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Mansfield Lahm AGS, Ohio

Right(s): Tribes retain fishing and hunting rights on ceded lands.

Treaty: Treaty with the Wyandot, etc., 1805, 7 Stat. 87.

Treaty Tribe(s): Chippewa, Delawares, Munsee, Ottawa, Potawatomi, Shawnee, Wyandot.

Treaty Stipulation of Rights: Article 6: "The said Indian nations, parties to this treaty, shall be at liberty to fish and hunt within the territory and lands which they have now ceded to the United States, so long as they shall demean themselves peaceably."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 54.

All Installations Listed for this Treaty: No others listed.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 53~54.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

MUNESEE: In the Treaty with the Chippewa, Etc., 1859 (12 Stat. 1105), the Munsee unite with Chippewa of Swan Creek and Black River. Article 4 states that Swan Creek and Black River Chippewas "receive the stipulations and provisions contained in these articles of agreement and convention, in full satisfaction of the terms and conditions of all former treaties, and release the United States from the payment of all claims of any character whatsoever."

In the Dec. 8, 1900 Agreement with the Stockbridge and Munsee (Green Bay Agency), the tribes "accept the following conditions as a full and complete settlement of all obligations of the Government, of whatever nature or kind, either expressed or implied, from whatever source the same may have accrued, whether under the treaty approved…..or otherwise..."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Ravenna AAP, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 though 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally, and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . ."

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: "The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…"

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : "The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes."

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POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Rickenbacker AGS, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

Treaty With The Delawares, 1860 (12 Stat. 1129), Article 8: "Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect."

KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally,

and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

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PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

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POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Springfield-Beckley AGS, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
DELAWARES: Treaty with the Delawares, 1818 (7 Stat. 188), Article 1: "The Delaware nation of Indians cede to the United States all their claim to land in the state of Indiana."

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KASKASKIA: Treaty with the Kaskaskia, Etc., 1832 (7 Stat. 403), Article 7: ". . . .the Peoria and Kaskaskia tribes and the bands of Michigamia, Cahokia and Tamarois Indians united with them, hereby forever cede and relinquish to the United States, their claims to lands within the States of Illinois and Missouri, and all other claims of whatsoever nature which they have had or preferred against the United States or the citizens thereof, up to the signing of this treaty."

Treaty with the Kaskaskia, Peoria, Etc., 1854 (10 Stat. 1082), Article 6 discharges U.S. "from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations."

KICKAPOO: Treaty with the Kickapoo, 1819 (7 Stat. 200), Article 4 releases "the United States from all obligations imposed by any treaties heretofore made with them" Article 10 states: "The said tribe, in addition to their above described cessions, do hereby cede and relinquish to the United States, generally,

and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

Treaty with the Kickapoo, 1854 (10 Stat. 1078), Article 8: “The Kickapoos release the United States from all claims or demands of any kind whatsoever, arising or which may hereafter arise under former treaties…”

Treaty with the Kickapoo, 1862 (13 Stat. 623), Article 15: “Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.”

OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: “The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . .”

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: “All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void.”

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of “national character” in court cases or law review discussions was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Toledo Express AGS, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

Treaty Stipulation of Rights: Article 7: "The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

Additional Information

Map Reference: See *Ohio and Ohio (detail)* Royce map in Appendix C. Installation falls within map cession number 19.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
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Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties:
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addition to their above described cessions, do hereby cede and relinquish to the United States, generally, and without reservation, all other tracts of land to which they have any right or title on the left side of the Illinois and Mississippi rivers. . .”

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OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : “The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes.”

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Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Wright Patterson AFB, Ohio

Right(s): Tribes retain hunting rights on ceded lands.

Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

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Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

All Installations Listed for this Treaty: Chicago ARS; Indiana AAP; FT Wayne AGS, Indiana; DEF Construction Supply Center, OH; Ravenna AAP, Ohio; Gentile DEF Electronic Supply, Ohio; Rickenbacker AGS, Ohio; Springfield-Beckley AGS, Ohio; Toledo Express AGS, Ohio; Wright Patterson AFB, Ohio; and Youngstown-Warren ARS, Ohio.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 11 through 27.

***Court Decisions on These Treaty Rights:** None found.
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Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

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Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Youngstown-Warren ARS, Ohio

Right(s): Tribes retain hunting rights on ceded lands.
Treaty: Treaty with the Wyandot, Etc., 1795 (Treaty of Greenville), 7 Stat. 49.
Treaty Tribe(s): Chippewa, Delawares, Kaskaskia, Kickapoo, Miami, Ottawa, Piankashaw, Potawatomi, Shawnee, Wea, Wyandot.

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Additional Information

Map Reference: See *Ohio* Royce map in Appendix C. Installation falls within map cession number 11.

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All Royce Map Numbers Listed for Land Ceded in This Treaty:
11~12~13~14~15~16~17~18~19~20~21~22~23~24~25~26~27.

***Court Decisions on These Treaty Rights:** None found.
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Comment(s): Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

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OTTAWA: Treaty with the Ottawa, 1831 (7 Stat. 359), Article 17: "the privileges of every description, granted to the Ottoway nation within the State of Ohio, by the treaties under which they hold the reservations of land herein ceded, shall forever cease and determine."

PIANKASHAW AND WEA: Treaty with the Piankashaw and Wea, 1832 (7 Stat. 410). Article 1 : "The undersigned Chiefs, Warriors, and considerate men, for themselves and their said tribes, for and in consideration of the stipulations hereinafter made, do hereby cede and relinquish to the United States forever, all their right, title and interest to and in lands within the States of Missouri and Illinois—hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes."

Treaty With The Kaskaskia, Peoria, Etc., 1854, (10 Stat. 1082), Article 6: "The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States. . ."

POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

WYANDOT: In the Treaty with the Wyandot, 1855 (10 Stat. 1159), the Wyandot relinquish all claims of a "national character." This is the only treaty using such phrasing, and no discussion of the meaning of "national character" in court cases or law review discussions was found. The issue of what the tribes understood "claims" to mean may be relevant. The Fox court (*U.S. v. Michigan*, 471 F. Supp. 192 [1979]) discussed the release of legal and equitable claims. Judge Fox noted in his opinion that a reserved right cannot be considered a "legal or equitable claim," because that right did not originate with the U.S. and was not "given" to Indians by the U.S. The federal government could not release a right it did not own: the Indians alone had the power to release fishing rights. Whether or not the Wyandot still have rights will depend upon interpretation of the Wyandot cession in the historical context of the 1855 treaty and of what the Wyandots understood the cession to mean.

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Altus AFB, Oklahoma

Right(s): Tribe retains the right to hunt on ceded land until U.S. assigns to other Indians.

Treaty: Treaty With the Quapaw, 1818, 7 Stat. 176.

Treaty Tribe(s): Quapaw.

Treaty Stipulation of Rights: Article 3: "It is agreed, between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably and offer no injury or annoyance to any of the citizens of the United States, and until the said United States may think proper to assign the same, or any portion thereof, as hunting grounds to other friendly Indians."

Additional Information

Map Reference: See *Indian Territory and Oklahoma 1* Royce map in Appendix C. Installation falls within map cession number 94.

All Installations Listed for this Treaty: Fort Chaffee, Arkansas; Camp Robinson, Arkansas; Fort Smith AGS, Arkansas; Little Rock AFB, Arkansas; and Altus AFB, Oklahoma.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 94~See 121.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): No indication found that other tribes were later settled on the land in question; therefore, these rights are assumed to be extant.

Consultation with tribe regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Umatilla Depot, Oregon

Right(s): Tribe retains right to take fish in streams running through/bordering reservation; fish at usual and accustomed grounds/stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the WallaWalla, Cayuse, Etc., 1855, 12 Stat. 945.

Treaty Tribe(s): Cayuse, Umatilla, Wallawalla.

Treaty Stipulation of Rights: Article 1: ". . . .the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them. . . ."

Additional Information

Map Reference: See *Oregon 1* Royce map in Appendix C. Installation falls within map cession number 362.

All Installations Listed for this Treaty: No others listed. This installation listed falls clearly within the ceded territory of the treaty. The "usual and accustomed stations" and "unclaimed lands" identified in Article 1 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installtion listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 362~363.

***Court Decisions on These Treaty Rights:**
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969)
Holcomb v. Confederated Tribes of the Umatilla Indian Reservation, 382 F.2d 1013 (9th Cir. 1967)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt Decision (384 F. Supp. 312 [1976]) defined “usual and accustomed” fishing grounds and stations as “every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters” (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian*

Reservation (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Camp Williams, Utah

Right(s): Hunting on unoccupied lands
Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.
Treaty Tribe(s): Eastern Band Shoshoni and Bannock.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Map Reference: See *Utah 1* Royce map in Appendix C. Installation falls within map cession number 520.

All Installations Listed for this Treaty: Depot Ogden, Camp Williams, Dugway Proving GR, Hill AFB, and Salt Lake City AGS, all in the state of Utah. The installations listed are those which fall clearly within the ceded territory of the treaty. The "unoccupied lands of the United States" identified in Article 4 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: See 524~See 539, 540~520.

***Court Decisions on These Treaty Rights:**
Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)
Swim v. Bergland, Ninth Circuit, 696 F.2d 712 (9th Cir. 1983)
Ward v. Race Horse, 163 U.S. 504 (1896)
State v. Cutler, Idaho Supreme Court, 109 Idaho 448 (1985)
State v. Tinno, Idaho Supreme Court, 94 Idaho 759 (1972)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Depot Ogden, Utah

Right(s): Hunting on unoccupied lands.

Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.
Treaty Tribe(s): Eastern Band Shoshoni and Bannock.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Map Reference: See *Utah 1* Royce map in Appendix C. Installation falls within map cession number 520.

All Installations Listed for this Treaty: Depot Ogden, Camp Williams, Dugway Proving GR, Hill AFB, and Salt Lake City AGS, all in the state of Utah. The installations listed are those which fall clearly within the ceded territory of the treaty. The "unoccupied lands of the United States" identified in Article 4 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: See 524~See 539, 540~520.

***Court Decisions on These Treaty Rights:**
Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)
Swim v. Bergland, Ninth Circuit, 696 F.2d 712 (9th Cir. 1983)
Ward v. Race Horse, 163 U.S. 504 (1896)
State v. Cutler, Idaho Supreme Court, 109 Idaho 448 (1985)
State v. Tinno, Idaho Supreme Court, 94 Idaho 759 (1972)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Dugway Proving GR, Utah

Right(s): Hunting on unoccupied lands
Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.
Treaty Tribe(s): Eastern Band Shoshoni and Bannock.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Map Reference: See *Utah 1* Royce map in Appendix C. Installation falls within map cession number 520.

All Installations Listed for this Treaty: Depot Ogden, Camp Williams, Dugway Proving GR, Hill AFB, and Salt Lake City AGS, all in the state of Utah. The installations listed are those which fall clearly within the ceded territory of the treaty. The "unoccupied lands of the United States" identified in Article 4 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: See 524~See 539, 540~520.

***Court Decisions on These Treaty Rights:**
Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)
Swim v. Bergland, Ninth Circuit, 696 F.2d 712 (9th Cir. 1983)
Ward v. Race Horse, 163 U.S. 504 (1896)
State v. Cutler, Idaho Supreme Court, 109 Idaho 448 (1985)
State v. Tinno, Idaho Supreme Court, 94 Idaho 759 (1972)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Hill AFB, Utah

Right(s): Hunting on unoccupied lands
Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.
Treaty Tribe(s): Eastern Band Shoshoni and Bannock.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Map Reference: See *Utah 1* Royce map in Appendix C. Installation falls within map cession number 520.

All Installations Listed for this Treaty: Depot Ogden, Camp Williams, Dugway Proving GR, Hill AFB, and Salt Lake City AGS, all in the state of Utah. The installations listed are those which fall clearly within the ceded territory of the treaty. The "unoccupied lands of the United States" identified in Article 4 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: See 524~See 539, 540~520.

***Court Decisions on These Treaty Rights:**
Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)
Swim v. Bergland, Ninth Circuit, 696 F.2d 712 (9th Cir. 1983)
Ward v. Race Horse, 163 U.S. 504 (1896)
State v. Cutler, Idaho Supreme Court, 109 Idaho 448 (1985)
State v. Tinno, Idaho Supreme Court, 94 Idaho 759 (1972)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Salt Lake City AGS, Utah

Right(s): Hunting on unoccupied lands.

Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.
Treaty Tribe(s): Eastern Band Shoshoni and Bannock.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Map Reference: See *Utah 1* Royce map in Appendix C. Installation falls within map cession number 520.

All Installations Listed for this Treaty: Depot Ogden, Camp Williams, Dugway Proving GR, Hill AFB, and Salt Lake City AGS, all in the state of Utah. The installations listed are those which fall clearly within the ceded territory of the treaty. The "unoccupied lands of the United States" identified in Article 4 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: See 524~See 539, 540~520.

***Court Decisions on These Treaty Rights:**
Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)
Swim v. Bergland, Ninth Circuit, 696 F.2d 712 (9th Cir. 1983)
Ward v. Race Horse, 163 U.S. 504 (1896)
State v. Cutler, Idaho Supreme Court, 109 Idaho 448 (1985)
State v. Tinno, Idaho Supreme Court, 94 Idaho 759 (1972)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Bangor Sub Base, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 347.

All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 347~348~349~350~351.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)

United States v. Lummi Indian Tribe, 841 F.2d 317 (9th Cir. 1988)

United States v. Skokomish Indian Tribe, 764 F.2d 670 (9th Cir. 1985)

United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

United States v. State of Washington. 476 F. Supp. 1101 (W.D. Wash, Tacoma Div. 1979). Appeal: see *U.S. v. Washington*. 98 F.3d 1159 (9th Cir. 1995)

United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

The Boldt decision and Post-Trial Orders found the following tribes to have rights under this treaty (this is not a comprehensive listing, only of those involved in the suit): Lummi, Muckleshoot (successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish), Sauk-Suiattle (Treaty of Point Elliot), Stillaguamish Tribe (descendants of "Stoluck-wha-mish" of the treaty), Upper Skagit Tribe (descendants of signatories, not identified except as "ten separate villages" who were signatories to treaties); Swinomish (successor to certain tribes and bands party to treaty); Tulalip (successor to certain, tribes, bands or groups party to treaty); Suquamish; and Nooksack Indians (court finds they are part of "Lummi and other tribes" mentioned in treaty).

The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al*. (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Everett NS, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 347.

All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 347~348~349~350~351.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)

United States v. Lummi Indian Tribe, 841 F.2d 317 (9th Cir. 1988)

United States v. Skokomish Indian Tribe, 764 F.2d 670 (9th Cir. 1985)

United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

United States v. State of Washington. 476 F. Supp. 1101 (W.D. Wash, Tacoma Div. 1979). Appeal: see *U.S. v. Washington*. 98 F.3d 1159 (9th Cir. 1995)
United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

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To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

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The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al.* (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Fort Lewis, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Nisqualli, Puyallup, etc.,1854 (Treaty of Medicine Creek), 10 Stat. 1132.

Treaty Tribe(s): Nisqualli, Puyallup, Sa-heh-wamish, S'Homamish, Squawskin, Squi-aitl, Stehchass, Steilacoom, T'Peeksin.

Treaty Stipulation of Rights: Article 3: "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: Provided, however, That they shall not take shellfish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter."

Additional Information

Map Reference: See *Northwestern Washington* Royce map in Appendix C. Installation falls within map cession number 345.

All Installations Listed for this Treaty: Fort Lewis, Washington; and McCord AFB, Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 3 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 345~346.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)
Puyallup Tribe, Inc., et al. v. Department Of Game of Washington et al., 433 U.S. 165 (1977)
Department of Game of Washington v. Puyallup Tribe et al., 414 U.S. 44 (1973)
Puyallup Tribe v. Department of Game of Washington et al., 391 U.S. 392 (1968)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)
U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

United States v. State of Washington, 476 F. Supp. 1101 (W.D. Wash, Tacoma Div., 1979)

United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
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Comment(s): The Boldt decision also cites the Muckleshoot tribe as signatories.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

The Boldt Decision identified the following tribes as having rights under this treaty (this is not a comprehensive listing, only that of tribes involved in the suit): Muckleshoot (successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish); Nisqually; Puyallup; Squaxin Island Tribe.

The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al.* (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

McCord AFB, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Nisqualli, Puyallup, etc.,1854 (Treaty of Medicine Creek), 10 Stat. 1132.

Treaty Tribe(s): Nisqualli, Puyallup, Sa-heh-wamish, S'Homamish, Squawskin, Squi-aitl, Stehchass, Steilacoom, T'Peeksin.

Treaty Stipulation of Rights: Article 3: "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: Provided, however, That they shall not take shellfish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter."

Additional Information

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All Royce Map Numbers Listed for Land Ceded in This Treaty: 345~346.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)
Puyallup Tribe, Inc., et al. v. Department Of Game of Washington et al., 433 U.S. 165 (1977)
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Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

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Comment(s): The Boldt decision also cites the Muckleshoot tribe as signatories.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

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Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

NAS Whidbey IS, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

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All Royce Map Numbers Listed for Land Ceded in This Treaty: 347~348~349~350~351.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)

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Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Navseawarfare, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 347.

All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

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***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

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Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

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The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al.* (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Puget Sound NS, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

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All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

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United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

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**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

The Boldt decision and Post-Trial Orders found the following tribes to have rights under this treaty (this is not a comprehensive listing, only of those involved in the suit): Lummi, Muckleshoot (successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish), Sauk-Suiattle (Treaty of Point Elliot), Stillaguamish Tribe (descendants of "Stoluck-wha-mish" of the treaty), Upper Skagit Tribe (descendants of signatories, not identified except as "ten separate villages" who were signatories to treaties); Swinomish (successor to certain tribes and bands party to treaty); Tulalip (successor to certain, tribes, bands or groups party to treaty); Suquamish; and Nooksack Indians (court finds they are part of "Lummi and other tribes" mentioned in treaty).

The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al*. (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Puget Sound SY, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 347.

All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 347~348~349~350~351.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)

United States v. Lummi Indian Tribe, 841 F.2d 317 (9th Cir. 1988)

United States v. Skokomish Indian Tribe, 764 F.2d 670 (9th Cir. 1985)

United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

United States v. State of Washington. 476 F. Supp. 1101 (W.D. Wash, Tacoma Div. 1979). Appeal: see *U.S. v. Washington*. 98 F.3d 1159 (9th Cir. 1995)

United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)

**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

The Boldt Decision defined “usual and accustomed” fishing grounds and stations as “every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters” (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that “usual and accustomed places” include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether “open and unclaimed” lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

The Boldt decision and Post-Trial Orders found the following tribes to have rights under this treaty (this is not a comprehensive listing, only of those involved in the suit): Lummi, Muckleshoot (successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish), Sauk-Suiattle (Treaty of Point Elliot), Stillaguamish Tribe (descendants of “Stoluck-wha-mish” of the treaty), Upper Skagit Tribe (descendants of signatories, not identified except as “ten separate villages” who were signatories to treaties); Swinomish (successor to certain tribes and bands party to treaty); Tulalip (successor to certain, tribes, bands or groups party to treaty); Suquamish; and Nooksack Indians (court finds they are part of “Lummi and other tribes” mentioned in treaty).

The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al*. (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Strategic Weapon Fac Pac, Washington

Right(s): Tribes retain rights to fish at usual and accustomed grounds and stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Dwamish, Suquamish, etc., 1855 (Treaty of Point Elliot), 12 Stat. 927.

Treaty Tribe(s): Cho-bah-ah-bish, Dwamish, Kik-i-allus, Mee-see-qua-guilch, Nook-wa-cha-mish, Noo-wa-ha, N'Quentl-ma-mish, Sah-ku-mehu, Sam-ahmish, Skagit, Skai-wha-mish, Skope-ahmish, Sk-tah-le-jum, Sk-tahl-mish, Smalhkamish, Sno-ho-mish, Snolqualmoo, Squin-a-mish, St-kah-mish, Stoluck-wha-mish, Suquamish, Swin-a-Mish, Allied Tribes of Washington.

Treaty Stipulation of Rights: Article 5 : "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 347.

All Installations Listed for this Treaty: Bangor Sub Base, Everett NS, Puget Sound NS, NAS Whidbey IS, Navseawarfare, Puget Sound SY, and Strategic Weapon Fac Pac, all in state of Washington. The installations listed are those that fall clearly within the ceded territory of the treaty. The "usual and accustomed grounds and stations" and "open and unclaimed lands" identified in Article 5 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installations listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 347~348~349~350~351.

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)

United States v. Lummi Indian Tribe, 841 F.2d 317 (9th Cir. 1988)

United States v. Skokomish Indian Tribe, 764 F.2d 670 (9th Cir. 1985)

United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)

United States v. State of Washington. 476 F. Supp. 1101 (W.D. Wash, Tacoma Div. 1979). Appeal: see *U.S. v. Washington*. 98 F.3d 1159 (9th Cir. 1995)

United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt decision also cites the Lummi, Muckleshoot, Sauk-Suiattle, and Stillaguamish as signatories.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

The Boldt decision and Post-Trial Orders found the following tribes to have rights under this treaty (this is not a comprehensive listing, only of those involved in the suit): Lummi, Muckleshoot (successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish), Sauk-Suiattle (Treaty of Point Elliot), Stillaguamish Tribe (descendants of "Stoluck-wha-mish" of the treaty), Upper Skagit Tribe (descendants of signatories, not identified except as "ten separate villages" who were signatories to treaties); Swinomish (successor to certain tribes and bands party to treaty); Tulalip (successor to certain, tribes, bands or groups party to treaty); Suquamish; and Nooksack Indians (court finds they are part of "Lummi and other tribes" mentioned in treaty).

The courts in *U.S. v. Washington* (98 F.3d 1159 [1995]) and *United States et al. v. State of Washington et al.* (641 F.2d 1368 [1981]) ruled that the present-day Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. In *United States v. Suquamish* (901 F.2d 772 [1990]), the court found that the Suquamish are not the successors of interest to the former Duwamish tribes and thus are not entitled to exercise the right to fish on the east side of Puget Sound (The Suquamish do have treaty rights in several areas on the west side of Puget Sound).

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Yakima Firing CTR, Washington

Right(s): Tribe retains right to take fish in streams running through/bordering reservation; fish at usual and accustomed grounds/stations; erect curing houses; and hunt, gather, and pasture on open and unclaimed lands.

Treaty: Treaty with the Yakima, 1855, 12 Stat. 951.

Treaty Tribe(s): Kamiltpah, Klikitat, Klinquit, Kow-was-say-we, Liaywas, Oakinakane, Ochechotes, Paloos, Pisquose, Seapcat, Shyiks, Skinpah, Wenatshapam, Wisham, Yakima.

Treaty Stipulation of Rights: Article 3: "….The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Additional Information

Map Reference: See *Washington 1* Royce map in Appendix C. Installation falls within map cession number 364.

All Installations Listed for this Treaty: No others listed. This installation falls clearly within the ceded territory of the treaty. The "usual and accustomed places" and "open and unclaimed land" identified in Article 3 can only be definitively established by consultation with the tribes. Such consultation may extend the geographical scope of the rights beyond the installation listed for this treaty.

All Royce Map Numbers Listed for Land Ceded in This Treaty: 364~365.

***Court Decisions on These Treaty Rights:**

United States v. Winans 198 U.S. 371 (1905)
Tulee v. State of Washington, 315 U.S. 681 (1942)
Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al. 443 U.S. 658 (1979)
United States v. Oregon and Confederated Tribes of Colville Reservation, 787 F. Supp. 1557 (D. Oregon 1992)
Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)

**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times,

however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Consultation with tribes regarding accuracy of boundaries and reserved rights is suggested.

In *United States v. Oregon and Confederated Tribes of Colville Reservation* (787 F. Supp. 1557 [D. Oregon, 1992]), the court held that the Colville Confederated tribes has "failed to establish that it is the successor Indian government and the present day holder of treaty rights reserved to the Wenatchi, Entiat, Chelan, Columbia, Palus, or Chief Joseph Band of Nez Perce in the treaties of 1855 with the Yakima Nation or with the Nez Perce," and thus do not possess rights under this treaty.

Possible Cession(s) of Rights in Later Treaties: Agreement with the Yakima Indians In Washington, 1894 (28 Stat. 320) cedes claims to Wenatshapam fishery as set forth in article 10 of this treaty.

Section Two: Treaties With Rights of Extensive and/or Indeterminate Geographical Boundaries

This section presents information on 19 treaties involving 52 tribes and/or tribal subunits who reserved rights of extensive and/or indeterminate boundaries. For example, it was not possible to map the boundaries of the rights reserved in the Treaty with the Kiowa, etc., of 1837, which states that it is "understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber to the western limits of the United States" (7 Stat. 533, Article 4). These 19 treaties vary in their intent and the reservation of rights. Some reserve rights associated with complex boundary lines set forth in the treaties. Others reserve rights in "usual and accustomed places," for which, in contrast to the 5 treaties presented in section one, no installations were located in the treaty-ceded lands. Federal courts have upheld the rights reserved in some of these treaties. Pertinent legal information is noted under the discussion of the respective treaties.

These treaties entailed a level of historical research and tribal consultation that was beyond the scope of this project. Tribal consultation and further research will be necessary to determine whether these reserved rights do impact identifiable DoD installations. Based upon the area of treaty negotiations and land cessions of the treaties, it is estimated that rights may exist in the following states: Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming. Table 2, "Treaties With Rights of Extensive and/or Indeterminate Geographical Boundaries" summarizes the data for these 19 treaties and concludes section two.

Tribal names are presented as they were used in the treaty documents themselves and may not reflect current naming preferences, spellings, or divisions of bands.

Treaty: Treaty with the Osage, 1808

Tribe(s): Osage.

Treaty Stipulation of Rights: Article 8: "And the United States agree that such of the Great and Little Osage Indians, as may think proper to put themselves under the protection of fort Clark, and who observe the stipulations of this treaty with good faith, shall be permitted to live and to hunt, without molestation, on all that tract of country, west of the north and south boundary line, on which they, the said Great and Little Osage, have usually hunted or resided: Provided, The same be not the hunting grounds of any nation or tribe of Indians in amity with the United States; and on any other lands within the territory of Louisiana, without the limits of the white settlements, until the United States may think proper to assign the same as hunting grounds to other friendly Indians."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Arkansas, Missouri, Kansas, and Oklahoma.
Royce Map Land Cession Number(s): 67~68~69

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Osage, 1825 (7 Stat.240), Article 1: "The Great and Little Osage Tribes or Nations do, hereby, cede and relinquish to the United States, all their right, title, interest, and claim, to lands lying within the State of Missouri and Territory of Arkansas, and to all lands lying West of the said State of Missouri and Territory of Arkansas, North and West of the Red River, South of the Kansas River, and East of a line to be drawn from the head sources of the Kansas, Southwardly through the Rock Saline, with such reservations, for such considerations, and upon such terms as are hereinafter specified, expressed, and provided for."

Treaty with the Osage, 1839 (7 Stat.576), Article 1 cedes ". . . all titles or interest in any reservation heretofore claimed by them within the limits of any other tribe. Second, Of all claims or interests under the treaties of November tenth, one thousand eight hundred and eight and June second, one thousand eight hundred and twenty-five, except so much of the latter as is contained in the sixth article thereof and the said Indians bind themselves to remove from the lands of other tribes, and to remain within their own boundaries." (The sixth article of the 1825 treaty reserves 54 tracts "to be laid off under the direction of the President of the United States, and sold, for the purpose of raising a fund to be applied to the support of schools, for the education of the Osage children, in such manner as the President may deem most advisable. . .").

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Treaty: Treaty with the Sioux, etc., 1825

Tribe(s): Chippewa, Iowa, Menominee, Ottawa, Potawatomi, Sauk & Fox, Sioux, Winnebago.

Treaty Stipulation of Rights: Article 13: "It is understood by all the tribes, parties hereto, that no tribe shall hunt within the acknowledged limits of any other without their assent, but it being the sole object of this arrangement to perpetuate a peace among them, and amicable relations being now restored, the Chiefs of all the tribes have expressed a determination, cheerfully to allow a reciprocal right of hunting on the lands of one another, permission being first asked and obtained, as before provided for."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Minnesota, Wisconsin, Illinois, and Iowa.
Royce Map Land Cession Number(s): None

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): This treaty sets forth rights between tribes. Whether such inter-tribal treaties vest reserved rights has not been adjudicated.

Possible Cession(s) of Rights in Later Treaties:
POTAWATOMI: Treaty With The Potawatomi, 1867 (15 Stat. 531), Article 13: "All provisions of former treaties inconsistent with the provisions of this treaty shall be hereafter null and void."

SAUK AND FOX: Treaty with the Sauk and Foxes, 1842 (7 Stat.596), Article 1 cedes "all the lands west of the Mississippi river, to which they have any claim or title, or in which they have any interest whatever. . ."

Treaty with the Sauk and Foxes of Missouri, 1854 (10 Stat.1074), Article 6: "The said Indians release the United States from all claims or demands of any kind whatsoever arising, or which may hereafter arise, under former treaties."

SIOUX: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Contingencies on Possible Cessions: Possible cessions depend upon interpretation of cession phrases within the historical context of each treaty.

Treaty: Treaty with the Comanche, Etc., 1835

Tribe(s): Comanche, Wichita.

Treaty Stipulation of Rights: Article 4: "It is understood and agreed by all the nations or tribes of Indians parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber, to the western limits of the United States."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Oklahoma, Texas, and Kansas.

Royce Map Land Cession Number(s): None

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Kiowa, Etc., 1837
Tribe(s): Kiowa, Kataka, Muscogee (Creeks), Tawakaro.

Treaty Stipulation of Rights: Article 4: "It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber to the western limits of the United States."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Oklahoma, Texas, and Kansas.

Royce Map Land Cession Number(s): None

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty of Fort Laramie with the Sioux, etc., 1851

Tribe(s): Arapaho, Arikara, Assiniboin, Cheyenne, Crows, Grosventres, Mandan, Sioux, Blackfeet referred to.

Treaty Stipulation of Rights: Article V: Tribes recognize respective boundaries. "….It is, however, understood that, in making this recognition and acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Montana, Wyoming, North Dakota, South Dakota, and Nebraska.

Royce Map Land Cession Number(s): See 529, 620, 621~300~See 398, 399~See 619, 635, 517~See 426

***Court Decisions on These Treaty Rights:**
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): This treaty sets forth rights between tribes. Whether such inter-tribal treaties vest reserved rights has not been adjudicated.

Possible Cession(s) of Rights in Later Treaties: CHEYENNE, SIOUX: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Treaty: Treaty with the S'klallam, 1855 (Treaty of Point No Point)

Tribe(s): Chemakum, S'klallam, Skokomish, Toanhooch.

Treaty Stipulation of Rights: Article 4: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purpose of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Washington.

Royce Map Land Cession Number(s): 353~354

***Court Decisions on These Treaty Rights:**

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)

United States v. Washington (Boldt decision) 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert. denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
United States v. Skokomish Indian Tribe. 764 F.2d 670 (9th Cir. 1985)
United States v. Lower Elwha Tribe, 642 F.2d 1141 (9th Cir. 1981)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

The Boldt decision and Post-Tribal Orders found the following tribes to have rights under this treaty (not a comprehensive listing, only those involved in the suit): Skokomish; Port Gamble Band of Clallam (successor to certain tribes, bands, or groups party to treaty); and Lower Elwha Band of Clallam (successor to certain tribes, bands, or groups party to treaty)

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Makah, 1855 (Treaty of Neah Bay)
Tribe(s): Makah.
Treaty Stipulation of Rights: Article 4: "The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Neah Bay, Washington.
Royce Map Land Cession Number(s): 355~356

***Court Decisions on These Treaty Rights:**
Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al., 443 U.S. 658 (1979)
United States v. Washington (Boldt decision) 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
United States v. Washington, 730 F.2d 1314 (9th Cir. 1984)
United States v. Lower Elwha Tribe, 642 F.2d 1141 (9th Cir. 1981)
Makah Indian Tribe et al. v. Schoettler, 192 F.2d 224 (9th Cir. 1951)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]). To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Nez Perces, 1855
Tribe(s): Nez Perces.

Treaty Stipulation of Rights: Article 3: ". . . . The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Washington and Oregon.
Royce Map Land Cession Number(s): 366~See 441, 442

***Court Decisions on These Treaty Rights:**
Nez Perce Tribe v. Idaho Power Company, 847 F. Supp. 791 (D. Idaho 1993)
United States v. Oregon and Confederated Tribes of Colville Reservation. 787 F. Supp. 1557 (D. Oregon 1992)
Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Tribes of Middle Oregon, 1855

Tribe(s): Confederated Tribes of Middle Oregon, Wallawalla.

Treaty Stipulation of Rights: Article 1: ". . . .Provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens, of the United States, and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them…."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Oregon.

Royce Map Land Cession Number(s): 369~370

***Court Decisions on These Treaty Rights:**
Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Although an 1865 treaty seems to clearly abrogate the rights of the 1855 treaty, this treaty has been cited in cases upholding the rights (cited above), with no mention of the evident abrogation of the rights.

It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties:
Treaty with the Middle Oregon Tribes, 1865 (14 Stat. 751), Article 1: "It having become evident from experience that the provision of article 1 of the treaty of the twenty-fifth of June, A. D. eighteen hundred and fifty-five, which permits said confederated tribes to fish, hunt, gather berries and roots, pasture stock, and erect houses on lands outside the reservation, and which have been ceded to the United States, is often abused by the Indians to the extent of continuously residing away from the reservation, and is detrimental to the interests of both Indians and whites; therefore it is hereby stipulated and agreed that all the rights enumerated in the third proviso of the first section of the before-mentioned treaty of the twenty-fifth of June, eighteen hundred and fifty-five—that is to say, the right to take fish, erect houses, hunt game, gather roots and berries, and pasture animals upon lands without the reservation set apart by the treaty aforesaid—are hereby relinquished by the confederated Indian tribes and bands of Middle Oregon, parties to this treaty."

Contingencies on Possible Cessions: Although the 1865 treaty seems to clearly abrogate the rights of the 1855 treaty, this treaty has been cited in fishing rights court cases, with no mention of the evident abrogation of the rights. In the Sohappy cases cited above, fishing rights were upheld for groups of treaties, including this one.

Treaty: Treaty with the Quinaiet, Etc., 1855 (Treaty of Olympia)
Tribe(s): Quinault, Queets, Hoh, and Quileute.

Treaty Stipulation of Rights: Article 3: "The right of taking fish at all usual and accustomed grounds and stations is secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing the same; together with the privilege of hunting, gathering roots and berries, and pasturing their horses on all open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens; and provided, also, that they shall alter all stallions not intended for breeding, and keep up and confine the stallions themselves."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Washington.

Royce Map Land Cession Number(s): 371~372~See 551

***Court Decisions on These Treaty Rights:**
Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al. 443 U.S. 658 (1979)

United States, et al. v. State of Washington, 235 F.3d 438 (9th Cir. 2000)
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981)

United States v. Washington (Boldt decision), 384 F. Supp. 312 (W.D. Wash. 1974) aff'd 520 F.2d 676 (9th Cir. 1975), *cert.denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976)
United States v. Hicks, 587 F. Supp. 1162 (W.D. Wash. 1984)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that "usual and accustomed places" include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether "open and unclaimed" lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

The Boldt decision named the Hoh, Quileute, Quinault, as parties to the suit and this treaty (this is not a comprehensive listing, only that of tribes involved in the suit).

In *Confederated Tribes of Chehalis Indian Reservation and Shoalwater Bay Indian Tribe v. State of Washington; William R. Wilkerson; Frank R. Lockard; Washington State Game Commission, and United States v. Washington* (96 F.3d 334 [1996]), the court held that the two tribes had not merged with the Quinault "in a manner sufficient to combine their tribal or political structures" and thus do not possess rights under this treaty.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Flatheads, Etc., 1855

Tribe(s): Flatheads, Kutenai, Pend d'Oreille.

Treaty Stipulation of Rights: Article 3: ". . . . The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Montana.

Royce Map Land Cession Number(s): 373~374

***Court Decisions on These Treaty Rights:**
Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
State of Montana v. Lasso Stasso, 172 Mont. 242 (1977)
State v. Coffee, 97 Idaho 905 (1976)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The U.S. Supreme Court has not addressed this treaty, but has upheld treaty rights for many of the similarly-phrased treaties of 1854 and 1855 in the following court cases:
Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al. (443 U.S. 658 [1979]); *Puyallup Tribe, Inc., et al. v. Department Of Game of Washington et al.* (433 U.S. 165 [1977]); *Department of Game of Washington v. Puyallup Tribe et al.* (414 U.S. 44 [1973]); and *Puyallup Tribe v. Department of Game of Washington et al.* (391 U.S. 392 [1968]).

The Boldt Decision (384 F. Supp. 312 [1976]) defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters" (at 332). Thus, off-reservation rights at "usual and accustomed places" may involve either an easement over or activity upon installations in traditional fishing areas.

The courts have inconsistently interpreted the phrase "open and unclaimed" lands. Some courts have held that such rights are limited only by the transfer of land into private ownership (thus tribes retain the right to hunt on federal lands, including national parkland; see *State v. Arthur* (2661 P. 2d 135 [Idaho 1953], *cert.denied*, 347 U.S. 937 [1954]), and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]). Less often, the courts have interpreted the phrase to mean that rights are terminated upon federal ownership for uses inconsistent with the treaty rights of hunting: see *United States v. Hicks* (587 F. Supp. 1162 [W.D. Wash. 1984]).

To summarize, the courts have determined that “usual and accustomed places” include all customary fishing areas of tribes; this may include DoD land holdings. The courts have not determined whether “open and unclaimed” lands include DoD land holdings. For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Cheyenne and Arapaho, 1865

Tribe(s): Cheyenne, Arapaho.

Treaty Stipulation of Rights: Article 3: "It is further agreed that until the Indians parties hereto have removed to the reservation provided for by the preceding article in pursuance of the stipulations thereof, said Indians shall be, and they are hereby, expressly permitted to reside upon and range at pleasure throughout the unsettled portions of that part of the country they claim as originally theirs, which lies between the Arkansas and Platte Rivers; and that they shall and will not go elsewhere, except upon the terms and conditions prescribed by the preceding article in relation to leaving the reservation thereby provided for: Provided, That the provisions of the preceding article in regard to encamping within ten miles of main travelled routes, military posts, towns, and villages shall be in full force as to occupancy of the country named and permitted by the terms of this article…"

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Colorado.

Royce Map Land Cession Number(s): 477~See 426

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): Determining the scope of the rights reserved will be contingent upon an examination of the phrase "country they claim as originally theirs." Although no installations fall within the lands ceded by this treaty, if the definition of "originally theirs" is taken to mean the ICC-established boundaries, there are 10 installations in Colorado that could be affected: Fitzsimmons AMC, Fort Carson, Pueblo Depot ACT, Rocky Mountain Arsenal, Centennial, Buckley AGB, Cheyenne MT, Falcon AFB, Peterson AFB, and USAF Academy. We have found no discussion of phrasing such as "originally theirs" in our examination of court cases. Extensive historical and legal research will be required to determine the scope of these rights.

Possible Cession(s) of Rights in Later Treaties: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Treaty: Treaty with the Kiowa and Comanche, 1867

Tribe(s): Kiowa, Comanche.

Treaty Stipulation of Rights: Article 11: "In consideration of the advantages and benefits conferred by this treaty and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside of their reservation, as herein defined, but they yet reserve the right to hunt on any lands south of the Arkansas [River,*] so long as the buffalo may range thereon in such numbers as to justify the chase…."

Article 16: "The tribes herein named agree, when the agency-house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the lands south of the Arkansas River, formerly called theirs, in the same manner, subject to the modifications named in this treaty, as agreed on by the treaty of the Little Arkansas, concluded the eighteenth day of October, one thousand eight hundred and sixty-five."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Colorado and New Mexico.

Royce Map Land Cession Number(s): None.

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights. There are no firm legal precedents by which to interpret the phrase "so long as the buffalo may range," and further investigation will be required to discover whether this phrase in fact limits the temporal ranges of the rights.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Cheyenne and Arapaho, 1867

Tribe(s): Arapaho, Cheyenne.

Treaty Stipulation of Rights: Article 11: "In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside of their reservation as herein defined, but they yet reserve the right to hunt on any lands south of the Arkansas so long as the buffalo may range thereon in such numbers as to justify the chase…."

Article 15: "The tribes herein named agree that when the agency-house and other buildings shall be constructed on the reservation named, they will regard and make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right, subject to the conditions and modifications of this treaty, to hunt on the lands south of the Arkansas River, formerly called theirs, in the same manner as agreed on by the treaty of the "Little Arkansas," concluded the fourteenth day of October, eighteen hundred and sixty-five."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Colorado and New Mexico.

Royce Map Land Cession Number(s): 510

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights. There are no firm legal precedents by which to interpret the phrase "so long as the buffalo may range," and further investigation will be required to discover whether this phrase in fact limits the temporal ranges of the rights.

Possible Cession(s) of Rights in Later Treaties: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Treaty: Treaty with the Sioux--Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee--and Arapaho, 1868

Tribe(s): Sioux-Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee-and Arapaho.

Treaty Stipulation of Rights: Article 11: "In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside their reservation as herein defined, but yet reserve the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River, so long as the buffalo may range thereon in such numbers as to justify the chase…."

Article 15: "The Indians herein named agree that when the agency-house or other buildings shall be constructed on the reservation named, they will regard said reservation their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right, subject to the conditions and modifications of this treaty, to hunt, as stipulated in Article 11 hereof."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Nebraska.
Royce Map Land Cession Number(s): 516~See 584, 597

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The usufructuary rights were clearly ceded in an 1876 agreement, but the legality of the agreement is in question. The Supreme Court, in *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]) held that the U.S. illegally took the lands ceded in the 1876 agreement, which included the Black Hills. The court did not address the apparent abrogation of the hunting rights to the extent that it can be determined whether they were in fact extinguished. This treaty is of enormous significance for the Sioux, and has been in continuous litigation since 1920. Due to this fact, the DoD should approach the question of these rights with sensitivity and approach each of the tribes involved in the treaty to discuss their perception of the current scope of the rights.

Possible Cession(s) of Rights in Later Treaties: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Treaty: Treaty with the Crows, 1868

Tribe(s): Crows.

Treaty Stipulation of Rights: Article 4: "The Indians herein named agree, when the agency-house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Montana.
Royce Map Land Cession Number(s): See 619, 635~517

***Court Decisions on These Treaty Rights:**
Crow Tribe of Indians v. Repsis, 73 F.3d 982 (10th Cir. 1996)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase “so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Treaty with the Northern Cheyenne and Northern Arapaho, 1868

Tribe(s): Arapaho, Cheyenne.

Treaty Stipulation of Rights: Article 2: ". . .And the Northern Cheyenne and Arapahoe Indians do hereby relinquish, release, and surrender to the United States, all right, claim, and interest in and to all territory outside the two reservations above mentioned, except the right to roam and hunt while game shall be found in sufficient quantities to justify the chase."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Kansas and Colorado.
Royce Map Land Cession Number(s): None

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights. There are no firm legal precedents by which to interpret the phrase "while game shall be found in sufficient quantities to justify the chase," and further investigation will be required to discover whether this phrase in fact limits the temporal ranges of the rights.

Possible Cession(s) of Rights in Later Treaties: Agreement with the Sioux, Northern Cheyenne, and Arapaho, September 23-October 27, 1876, Article 1: ". . .the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated." (referring to treaty of April 29, 1868. This agreement is of disputed legality: see *United States v. Sioux Nation of Indians et. al.* (448 U.S. 371 [1980]).

Treaty: Treaty with the Navaho, 1868

Tribe(s): Navaho.

Treaty Stipulation of Rights: Article 9: "In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase….."

Article 13. "The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty. . . ."

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Utah, Colorado, New Mexico, and Arizona.
Royce Map Land Cession Number(s): 518~519

***Court Decisions on These Treaty Rights:** None found.
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

The courts have yet to determine the scope of "unoccupied lands of the United States." The courts have determined that the similar phrasing of "open and unclaimed lands" can in fact apply to federal lands (*State v. Arthur*, 2661 P. 2d 135 [Idaho 1953], *cert. denied*, 347 U.S. 937 [1954] and *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation* (382 F.2d 1013 [9th Cir. 1967]), but there has been little discussion of the phrasing utilized in this treaty. Similarly, the courts have yet to interpret the phrase "so long as the game may be found upon." For further discussion, please see Holt 1986 and Nye 1992, cited in Bibliography.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

Treaty: Agreement with Indians of Colville Reservation, 1891

Tribe(s): Okanagan; Nez Perce; Columbia; Kettle River band; Lake; Colville.

Treaty Stipulation of Rights: Article 6: It is stipulated and agreed. . . That the right to hunt and fish in common with all other persons on lands not allotted to said Indians shall not be taken away or in anywise abridged.

Additional Information

Geographic Area of Treaty and/or Treaty Rights: Washington.
Royce Map Land Cession Number(s): None

***Court Decisions on These Treaty Rights:** *Antoine Et Ux. V. Washington*, 420 U.S. 194 (1975)
**The court case information does not represent a comprehensive listing; it lists only those cases located in the course of the research project.*

Comment(s): It is difficult to determine the geographical boundaries that correlate with the reserved rights described in this treaty. Consequently, it is unclear whether any DoD installations are located in the areas affected by potential treaty rights.

Possible Cession(s) of Rights in Later Treaties: No cessions found in subsequent treaties.

APPENDIX A
DOD INSTALLATIONS CONSIDERED FOR THIS PROJECT*

*compiled from:

- FY 1999 Sikes Act Reporting Data. Defense Environmental Restoration Program Annual Report to Congress for Fiscal Year 1999.
- Department of Defense/ "FY96 Worldwide List of Military Installations.
- "Military Bases in the Continental United States." National NAGPRA Program, National Park Service, Native American Consultation Database.
- DOD Military Installations (Information as of December 1996). U.S. Army Corps of Engineers, Center for Cultural Site Preservation Technology.

AIR FORCE

State	Base Name	Royce Map #	Treaty
AL	Abston AGS	75	Treaty with Creeks, August 9, 1814
AL	Birmingham AGS	75	Treaty with Creeks, August 9, 1814
AL	Dannelly Field AGS	75	Treaty with Creeks, August 9, 1814
AL	Hall AGS	75	Treaty with Creeks, August 9, 1814
AL	Maxwell AFB	75	Treaty with Creeks, August 9, 1814
AR	Fort Smith AGS	94	Treaty with the Quapaw, August 24, 1818
AR	Little Rock AFB	94	Treaty with the Quapaw, August 24, 1818
CO	Buckley AGB	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Cheyenne MT	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Falcon AFB	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Peterson AFB	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	USAF Academy	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
FL	Avon Park AFS	173	Treaty with the Seminole May 9, 1832
FL	Cape Canaveral	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Eglin AFB	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Hulbert Field	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Jacksonville AGS	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	MacDill AGS	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Patrick AFB	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Tyndall AFB	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
GA	Dobbins ARB	116	Treaty with the Creeks,Jan.8, 1821
GA	McCollum AGS	203	Treaty with Cherokee Dec.29,1835
GA	Moody AFB	75	Treaty with the Creeks. Aug.9,1814
GA	Robins AFB	60	Treaty with the Creeks. Nov.14, 1805
IA	Des Moines AGS	262	Treaty with the Sauk and Fox Oct.11,1842
IA	Sioux Gateway AGS	151	Treaty with the Sauk and Fox, etc July 15,1830
ID	Boise Air Terminal AGS	444	Treaty with the Western Shoshoni. Oct. 1, 1863
ID	Mountain Home AFB	444	Treaty with the Western Shoshoni. Oct. 1, 1863
IL	Capital AGS	110	Treaty with the Kickapoo. Aug.30, 1819
IL	Chicago ARS	24	Treaty with the Wyandotte, etc, Aug 3, 1795
IL	Greater Peoria AGS	77	Treaty with the Ottawa, etc. Aug. 24, 1816
IL	Scott AFB	48	Treaty with the Kaskaskia. Aug. 13, 1803
IN	FT Wayne AGS	16	Treaty with the Wyandotte, etc August 3, 1795
IN	Grissom ARB	258	Treaty with the Miami Nov.28, 1840
IN	Hulman AGS	71	Treaty with the Delawares, etc Sept.30,1809
KS	Forbes Field AGS	318	Treaty with the Shawnee May 10, 1854
KS	McConnel AFB	476	Treaty with the Osage Sept 29, 1865
MI	Selfridge AGB	66	Treaty with the Ottawa,etc Nov. 17 1807
MI	W.K. Kellog AGS	111	Treaty with the Chippewa Sept 24, 1819
MN	Duluth AGS	332	Treaty with the Chippewa. Sept.30, 1854
MN	Minneapolis-St.Paul IAP AGS	None	Treaty with the Sioux. Sept.23, 1805
MN	Minneapolis-St.Paul IAP AGS	289	Treaty with the Sioux, Sisseton and Wahpeton Bands, July 23, 1851
MN	Minneapolis-St.Paul IAP AGS	289	Treaty with the Sioux, Mdewakanton and Wahpakoota Bands, August 5, 1851
MO	DMA St. Louis	67	Treaty with the Osage Nov.10, 1808
MO	Jefferson Barracks AFS	67	Treaty with the Osage Nov.10, 1808
MO	Lambert-St Louis AGS	67	Treaty with the Osage Nov.10, 1808
MO	Rosecranz Memorial AGS	151	Treaty with the Sauk and Fox, etc July 15, 1830
MO	Whiteman AFB	67	Treaty with the Osage Nov.10, 1808
MS	Columbus AFB	82	Treaty with the Choctaw Oct 24, 1816
MS	Key Field AGS	156	Treaty with the Choctaw Sept 27, 1830
MT	Great Falls AGS	399	Treaty with the Blackfeet Oct 17, 1855
MT	Malmstrom AFB	399	Treaty with the Blackfeet Oct 17, 1855

ND	Cavalier AS	445	Treaty with the Chippewa- Red Lake and Pembina Bands, Oct.2, 1863
ND	Grand Forks AFB	445	Treaty with the Chippewa- Red Lake and Pembina Bands, Oct.2, 1863
ND	Hector AGS	538	Treaty with the Sioux (Sisseton & Wahpeton). Feb. 19, 1867
ND	Hector AGS	None	None
ND	Minot AFB	None	None
NE	Lincoln MAP AGS	186	Treaty with the Oto and Missouri. Sept.21, 1833
NE	Offutt AFB	315	Treaty with the Omaha. Mar. 16, 1854
NM	Cannon AFB	688	None
NM	Holloman AFB	688	None
NM	Kirtland AFB	688	None
NV	Nellis AFB	558	None
NV	Reno-Tahoe AGS	473	None
NV	Tonopah AFS	562	None
NY	Hancock Field AGS	9	Treaty with the Six Nations Nov.11, 1794
NY	Niagara Falls ARS	None	None
OH	Camp Perry	87	Treaty with the Wyandotte, etc Sept 29, 1817
OH	Camp Perry AGS	87	Treaty with the Wyandotte, etc Sept 29, 1817
OH	Gentile DEF Electronic Supply	11	Treaty with the Wyandotte,etc Aug.3, 1795
OH	Mansfield Lahm AGS	54	Treaty with the Wyandotte, etc July 4, 1805
OH	Rickenbacker AGS	11	Treaty with the Wyandotte,etc Aug.3, 1795
OH	Springfield-Beckley AGS	11	Treaty with the Wyandotte,etc Aug.3, 1795
OH	Toledo Express AGS	19	Treaty with the Wyandotte, etc Aug.3, 1795
OH	Wright Patterson AFB	11	Treaty with the Wyandotte,etc Aug.3, 1795
OH	Youngstown-Warren ARS	11	Treaty with the Wyandotte,etc Aug.3, 1795
OK	Altus AFB	485	Treaty with the Choctaw & Chickasaw April 28, 1866
OK	Altus AFB	94	Treaty with the Qaupaw Aug.24, 1818
OK	Tinker AFB	480	Treaty with the Seminole, March 21, 1866
OK	Tulsa AGS	543	None
OK	Tulsa AGS	123	Treaty with the Osage, June 2, 1825
OK	Vance AFB	489	Treaty with the Cherokee, July 19, 1866
OK	Will Rogers AGS	480	Treaty with the Seminole, March 21, 1866
OR	Klamath Falls AGS	462	Treaty with the Klamath, etc. Oct. 14, 1864
OR	Portland AGS	352	Treaty with the Kalapuya, etc. Jan.22, 1855
SD	Ellsworth AFB	598	Agreement with the Sioux and Northern Cheyenne and Arapaho. Sept.26, 1876
SD	Joe Foss Field AGS	289	Treaty with the Sioux, Sisseton and Wahpeton, July 23, 1851
TN	Arnold AFB	57	Treaty with the Cherokee Oct. 25, 1805
TN	Arnold AFB	84	Treaty with the Cherokee July 8, 1817
TN	McGhee Tyson AGS	8	Treaty with the Cherokee July 2, 1791
TN	Memphis AGS	100	Treaty with the Chickasaw Oct.19, 1818
TN	Nashville AGS	3	Treaty with the Cherokee, Nov. 28, 1785
TX	Brooks AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Dyess AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Eldorado AFS	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Goodfellow AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Kelly AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Lackland AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Laughlin AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Reese AFB	511	None
TX	Sheppard AFB	478	Treaty with the Comanche and Kiowa Oct.18, 1865
UT	Hill AFB	520	Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868
UT	Salt Lake City AGS	520	Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868
WA	Fairchild AFB	553	None
WA	Four Lakes AGS	553	None
WA	McCord AFB	345	Treaty with the Nisqualli, Puyallup, etc. December 26, 1854
WA	Spokane AGS	553	None
WI	Dane CO AGS	174	Treaty with the Winnebago, Sept.15, 1832

WI	Gen. Mitchell ARS	187	Treaty with the Chippewa, etc. Sept. 26, 1833
WY	Cheyenne AGS	426	Treaty with the Arapaho and Cheyenne Feb.15, 1861
WY	Frances E. Warren AFB	426	Treaty with the Arapaho and Cheyenne Feb.15, 1861

ARMY

State	Base Name	Royce Map #	Treaty
AL	Alabama AAP	172	Treaty with Creeks, March 24,1832
AL	Anniston Army Depot	172	Treaty with Creeks, March 24,1832
AL	Fort McClellan	172	Treaty with Creeks, March 24,1832
AL	Fort Rucker	75	Treaty with Creeks, August 9, 1814
AL	Redstone Arsenal	64	Treaty with Cherokee, January 7,1806
AR	Camp Robinson	94	Treaty with the Quapaw, August 24, 1818
AR	Fort Chaffee	94	Treaty with the Quapaw, August 24, 1818
AR	Pine Bluff Arsenal	121	Treaty with the Quapaw, Nov.15 1824
AZ	Camp Navajo	689	None
AZ	Davis-Mountain AFB	689	None
AZ	Florence	689	None
AZ	Fort Huachuca	689	None
AZ	Gila Bend AFS	639	None
AZ	Luke AFB	687	None
AZ	Papago Park Military Res.	689	None
AZ	Phoenix Sky Harbor AGS	689	None
AZ	Tucson AGS	689	None
AZ	Yuma Proving GRD	686	None
CO	Centennial	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Fitzsimmons AMC	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Fort Carson	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Pueblo Depot ACT	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
CO	Rocky Mountain Arsenal	426	Treaty with the Arapaho and Cheyenne. February 15, 1861
FL	Camp Blanding	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Eglin Training Center	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
GA	Catoosa Training Site	203	Treaty with Cherokee Dec.29,1835
GA	Fort Benning	127	Treaty with the Creeks, Jan.24, 1826
GA	Fort Gillem	116	Treaty with the Creeks,Jan.8, 1821
GA	Fort McPherson	116	Treaty with the Creeks,Jan.8, 1821
IA	Camp Dodge	262	Treaty with the Sauk and Fox Oct.11,1842
IA	Iowa AAP	175	Treaty with the Sauk and Fox Sept.21,1832
ID	Gowen Field	444	Treaty with the Western Shoshoni. Oct. 1, 1863
IL	Camp Marseilles	78	Treaty with Ottawa, etc. Aug 24, 1816
IL	Charles Melvin Price SPT Ctr	48	Treaty with the Kaskaskia. Aug. 13, 1803
IL	Joliet AAP	78	Treaty with Ottawa, etc. Aug 24, 1816
IL	Rock Island Arsenal	50	Treaty with the Sac and Fox. Nov.3,1804
IL	Savanna Depot ACT	50	Treaty with the Sac and Fox. Nov.3,1804
IN	Camp Atterbury	99	Treaty with the Miami Oct. 6, 1818
IN	Fort Benjamin Harrison	99	Treaty with the Miami, Oct. 6,1818
IN	Indiana AAP	25	Treaty with the Wyandotte,etc Aug.3, 1795
IN	Jefferson Proving Grounds	56	Treaty with the Delawares,etc Aug.21,1805
IN	Newport Chem Activity	71	Treaty with the Delawares,etc Sept.30,1809
KS	Fort Riley	264	Treaty with the Kansa Tribe Jan.14,1846
KS	Ft. Leavenworth	316	316. Treaty with the Delawares May 6, 1854
KS	Ft. Leavenworth	124	Treaty with the Kansa June 3, 1825
KS	Kansas AAP	124	Treaty with the Kansa June 3, 1825
KS	Kansas Regional Training Center	124	Treaty with the Kansa June 3, 1825
KS	Sunflower AAP	319	Treaty with the Shawnee May 10, 1854
LA	Louisiana AAP	202	Treaty with the Caddo July 1, 1835
MI	Camp Custer	111	Treaty with the Chippewa Sept 24, 1819
MI	Camp Grayling	205	Treaty with the Ottawa,etc March 28, 1836

MI	Detroit Arsenal	66	Treaty with the Ottawa,etc Nov. 17 1807
MI	US Army Garrison Selfridge	66	Treaty with the Ottawa,etc Nov. 17 1807
MN	Camp Ripley	242	Treaty with the Chippewa. July 29, 1837
MN	Twin Cities AAP	243	Treaty with the Sioux. Sept.29, 1837
MO	Camp Clark	123	Treaty with the Osage June 2, 1825
MO	Camp Crowder	123	Treaty with the Osage June 2, 1825
MO	Fort Leonard Wood	67	Treaty with the Osage Nov.10, 1808
MO	Lake City AAP	123	Treaty with the Osage June 2, 1825
MO	Wappapello Training Site	67	Treaty with the Osage Nov.10, 1808
MS	Camp McCain	156	Treaty with the Choctaw Sept 27, 1830
MS	Camp Shelby	61	Treaty with the Choctaw Nov.16, 1805
MT	Fort Harrison	398	Treaty with the Blackfeet Oct 17, 1855
ND	Camp Grafton	538	Treaty with the Sioux (Sisseton & Wahpeton). Feb. 19, 1867
ND	Camp Grafton	None	None
NE	Camp Hastings	191	Treaty with the Pawnee. Oct.9, 1833
NE	Cornhusker AAP	270	Treaty with the Pawnee - Grand Loups Republicans. August 6, 1848
NE	Cornhusker AAP	408	Treaty with the Pawnee. Sept. 24, 1857
NM	White Sands Missile Range	688	None
NV	Hawthorne Army Depot	473	None
NV	Stead Training Site	473	None
NY	Hancock Army Complex	9	Treaty with the Six Nations Nov.11, 1794
OH	DEF Construction Supply Center	11	Treaty with the Wyandotte,etc Aug.3, 1795
OH	Lima Army Tank Plant	87	Treaty with the Wyandotte, etc Sept 29, 1817
OH	Ravenna AAP	11	Treaty with the Wyandotte,etc Aug.3, 1795
OR	Camp Rilea	397	None
OR	Umatilla Depot	362	Treaty with the Wallawalla, Cayuse, etc June 9, 1855
SD	Camp Rapid	598	Agreement with the Sioux and Northern Cheyenne and Arapaho. Sept.26, 1876
TN	Camp John Sevier	8	Treaty with the Cherokee July 2, 1791
TN	Camp Milan	100	Treaty with the Chickasaw Oct.19, 1818
TN	Depot Memphis	100	Treaty with the Chickasaw Oct.19, 1818
TN	Milan AAP	100	Treaty with the Chickasaw Oct.19, 1818
TN	Volunteer AAP	203	Treaty with the Cherokee Dec.29, 1835
TX	Camp Bowie	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Camp Wolters	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Ft Bliss	688	None
TX	Ft Sam Houston	478	Treaty with the Comanche and Kiowa Oct.18, 1865
TX	Stanley Camp	478	Treaty with the Comanche and Kiowa Oct.18, 1865
UT	Camp Williams	520	Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868
UT	Depot Ogden	520	Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868
UT	Dugway Proving GR	520	Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868
UT	Tooele Army Depot	447	Treaty with the Shoshoni-Goship Oct. 12, 1863
WA	Fort Lewis	345	Treaty with the Nisqualli, Puyallup, etc. December 26, 1854
WA	Vancouver Barracks	458	None
WA	Yakima Firing CTR	364	Treaty with the Yakima June 9, 1855
WI	Badger AAP	245	Treaty with the Winnebago, Nov.1, 1837
WI	Ft McCoy	245	Treaty with the Winnebago, Nov.1, 1837
WY	Camp Guernsey	597	None

MARINES

State	Base Name	Royce Map #	Treaty
AZ	Marine Corps Air Station Yuma	689	None
GA	MC Logistics Base ICP	75	Treaty with Creeks, August 9, 1814
MO	Marine Corps Support Activity	151	Treaty with the Sauk and Fox, etc July 15, 1830

NAVY

State	Base Name	Royce Map #	Treaty
FL	Coastal Systems Station	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	NAS Cecil Field	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	NAS Jacksonville	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	NAS Pensacola	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	NAS Whiting Field	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Naval Air Warfare Center Training Systems Division	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Naval Aviation Depot Pensacola	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Nav. Ed. & Training Ctr, Corry Field	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
FL	Naval OLF, Saufley	118	Treaty with the Florida Tribes of Indians. Sept. 18,1823
GA	NAS Atlanta	116	Treaty with the Creeks,Jan.8, 1821
GA	Navy Supply Corps School	7	Treaty with the Creeks, Aug.7, 1790
IL	Great Lakes Naval Training CTR	187	Treaty with the Chippewa, etc. Sept.26, 1833
IN	Crane Div, NAV Surface Warfare Ctr	71	Treaty with the Delawares, etc Sept.30,1809
IN	Naval Air Warfare Cntr, Aircraft Div	99	Treaty with the Miami Oct. 6, 1818
MS	NAS Meridian	156	Treaty with the Choctaw Sept 27, 1830
NV	NAS Fallon	562	None
TN	NAS Memphis	100	Treaty with the Chickasaw Oct.19, 1818
WA	Bangor Sub Base	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	Everett NS	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	NAS Whidbey IS	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	Navseawarfare	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	Puget Sound NS	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	Puget Sound SY	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855
WA	Stratweapfacpac	347	Treaty with the Dwamish, Suquamish, etc. Jan. 22, 1855

APPENDIX B
LIST OF TREATIES AND AGREEMENTS EXAMINED*

*compiled from:

- *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979* (Vol. 1& 2). Deloria, Vine, Jr., and Raymond J. DeMallie. 1999.
- *Indian Affairs: Laws and Treaties, Volumes I, II, and III.* Compiled and edited by Charles J. Kappler, 1904.
- *American Indian Treaties: The History of a Political Anomaly.* Prucha, Francis P. 1994.

Treaties Included in Research*

1. Treaty with the Western Indians, 1775		Deloria and DeMallie, 49-65
2. Treaty with the Seneca, Cayuga, Nanticoke, and Conoy, 1776		Deloria and DeMallie, 65-68
3. Treaty with the Passamaquoddy, Penobscot, and Malecite, 1777 (See Congressional hearings)		Deloria and DeMallie
4. Treaty with the Winnebago, 1778 (Colonel Clark's memorandum to a Winnebago Chief)		Deloria and DeMallie, 78-79
5. Treaty with the Fox, 1778		Deloria and DeMallie, 79
6. Treaty with the Delawares, 1778	7 Stat. 13	Kappler 2:3-5
7. Treaty with the Cherokee, 1779		Deloria and DeMallie, 79-81
8.Treaty with the Six Nations, 1784	7 Stat. 15	Kappler 2:5-6
9. Treaty with the Wyandot, etc., 1785	7 Stat. 16	Kappler 2:6-8
10 Treaty with the Cherokee, 1785	7 Stat. 18	Kappler 2:8-11
11. Treaty with the Choctaw, 1786	7 Stat. 21	Kappler 2:11-14
12. Treaty with the Chickasaw, 1786	7 Stat. 24	Kappler 2:14-16
13. Treaty with the Shawnee, 1786	7 Stat. 26	Kappler 2:16-18
14. Treaty with the Six Nations, 1789	7 Stat. 33	Kappler 2:23-25
15. Treaty with the Wyandot, etc., 1789	7 Stat. 28	Kappler 2:18-23
16. Treaty with the Creeks, 1790	7 Stat. 35	Kappler 2:25-29
17. Treaty with the Cherokee, 1791 and additional article, February 17, 1792	7 Stat. 39, 42	Kappler 2:29-33
18. Agreement with the Five Nations of Indians, 1792		Kappler 2:1027

19. Treaty with the Cherokee, 1794	7 Stat. 43	Kappler 2:33-34
20. Treaty with the Chickasaw, 1794		Deloria and DeMallie, 217
21. Treaty with the Six Nations, 1794	7 Stat. 44	Kappler 2:34-37
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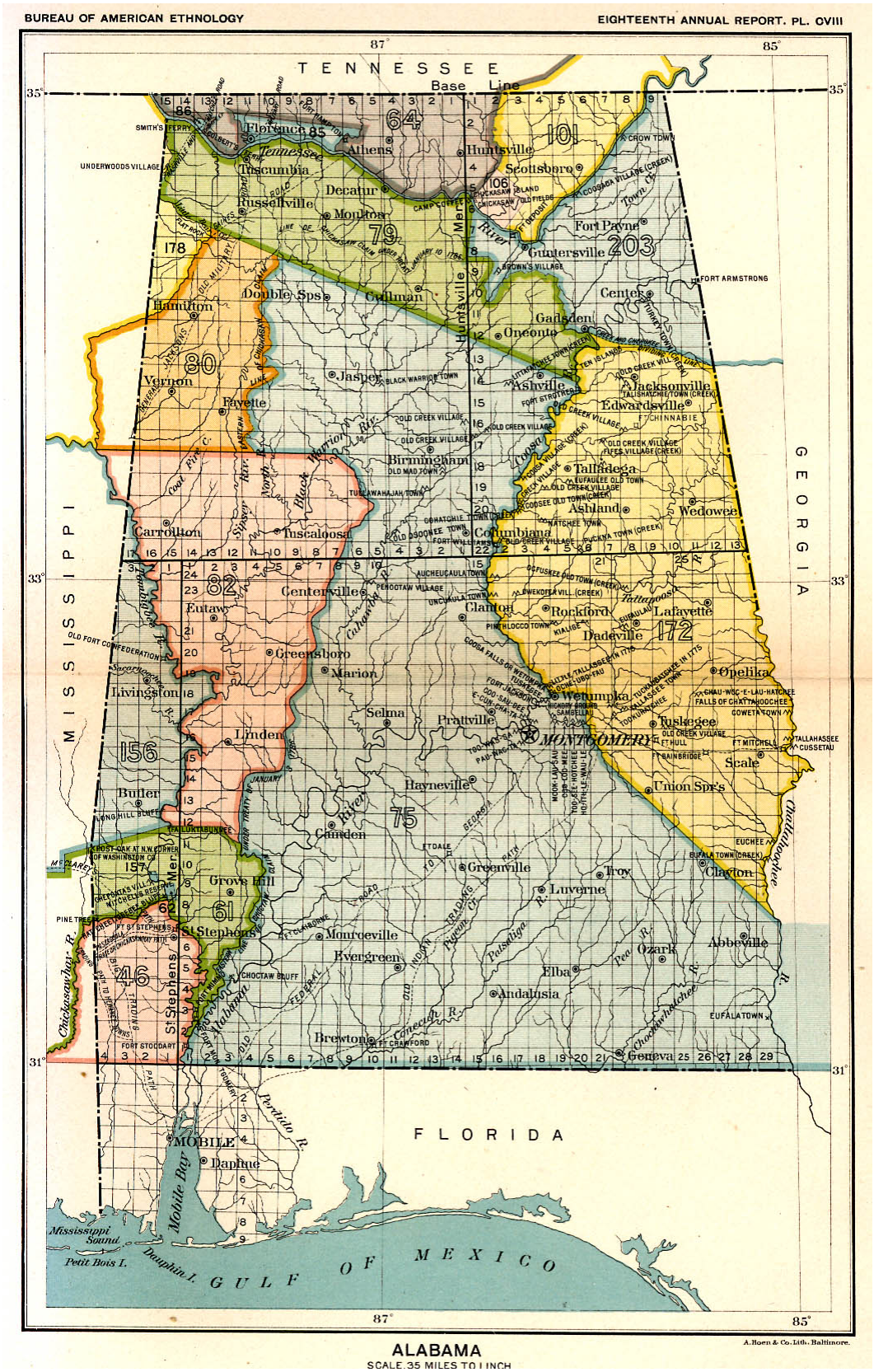
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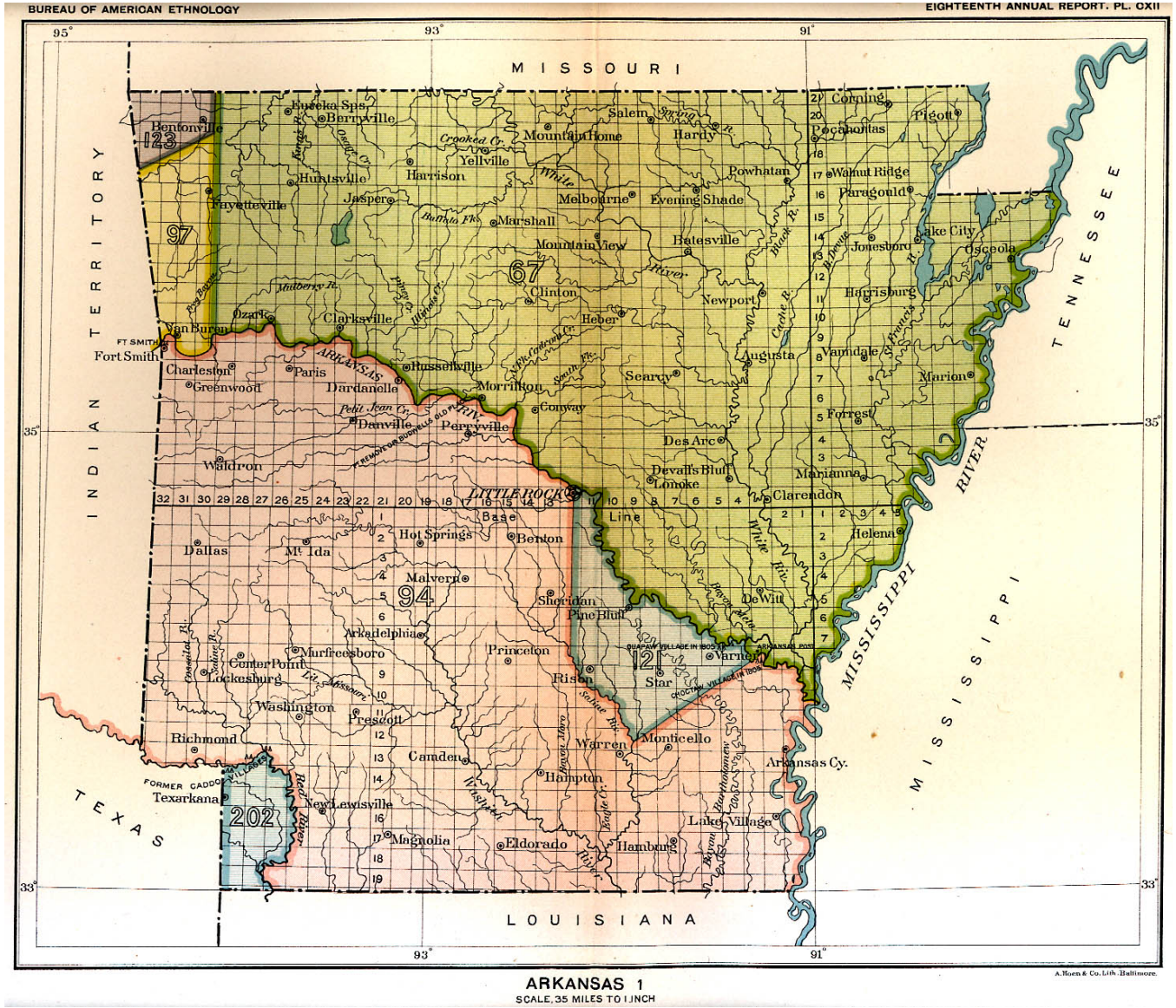
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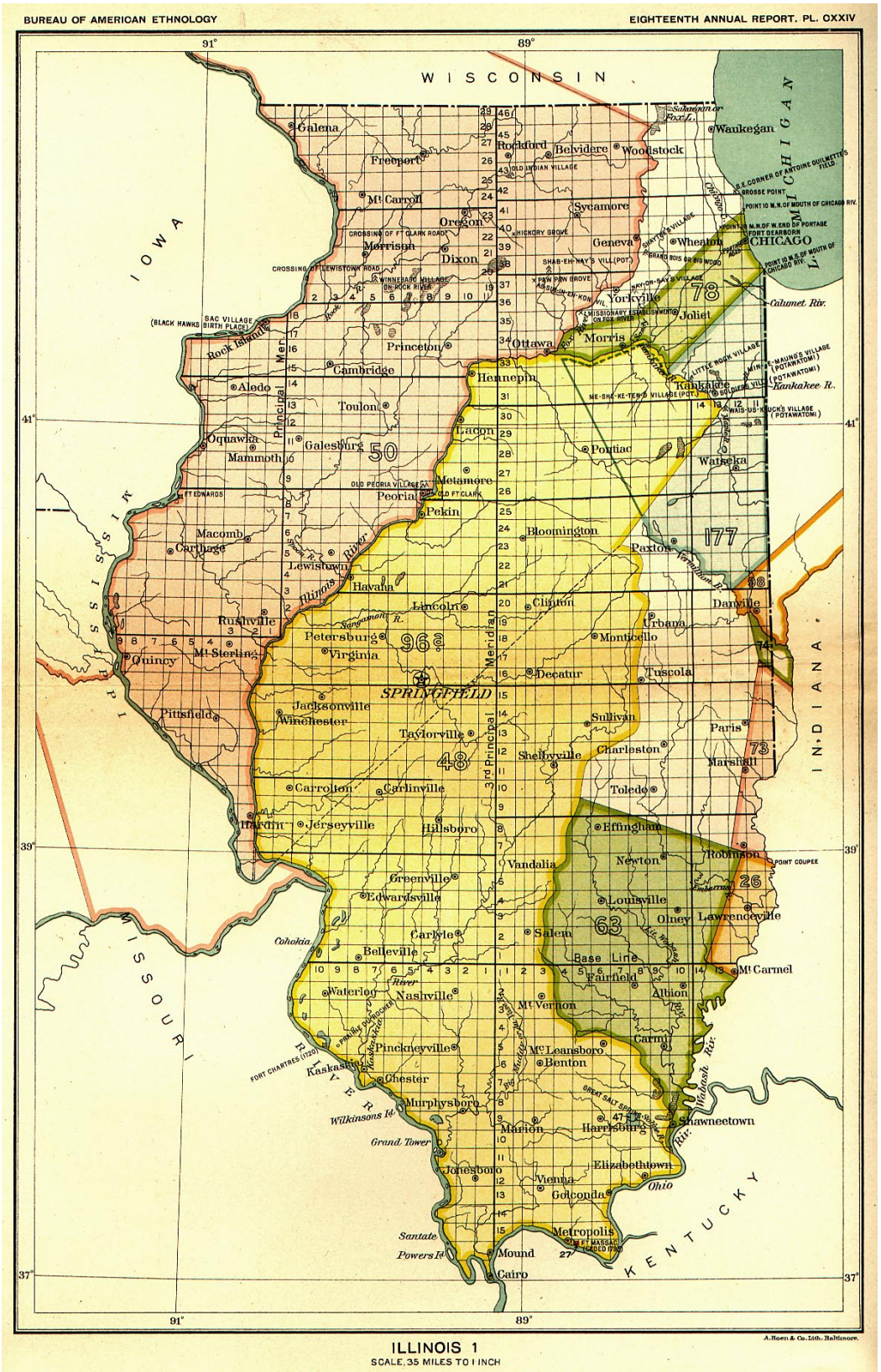
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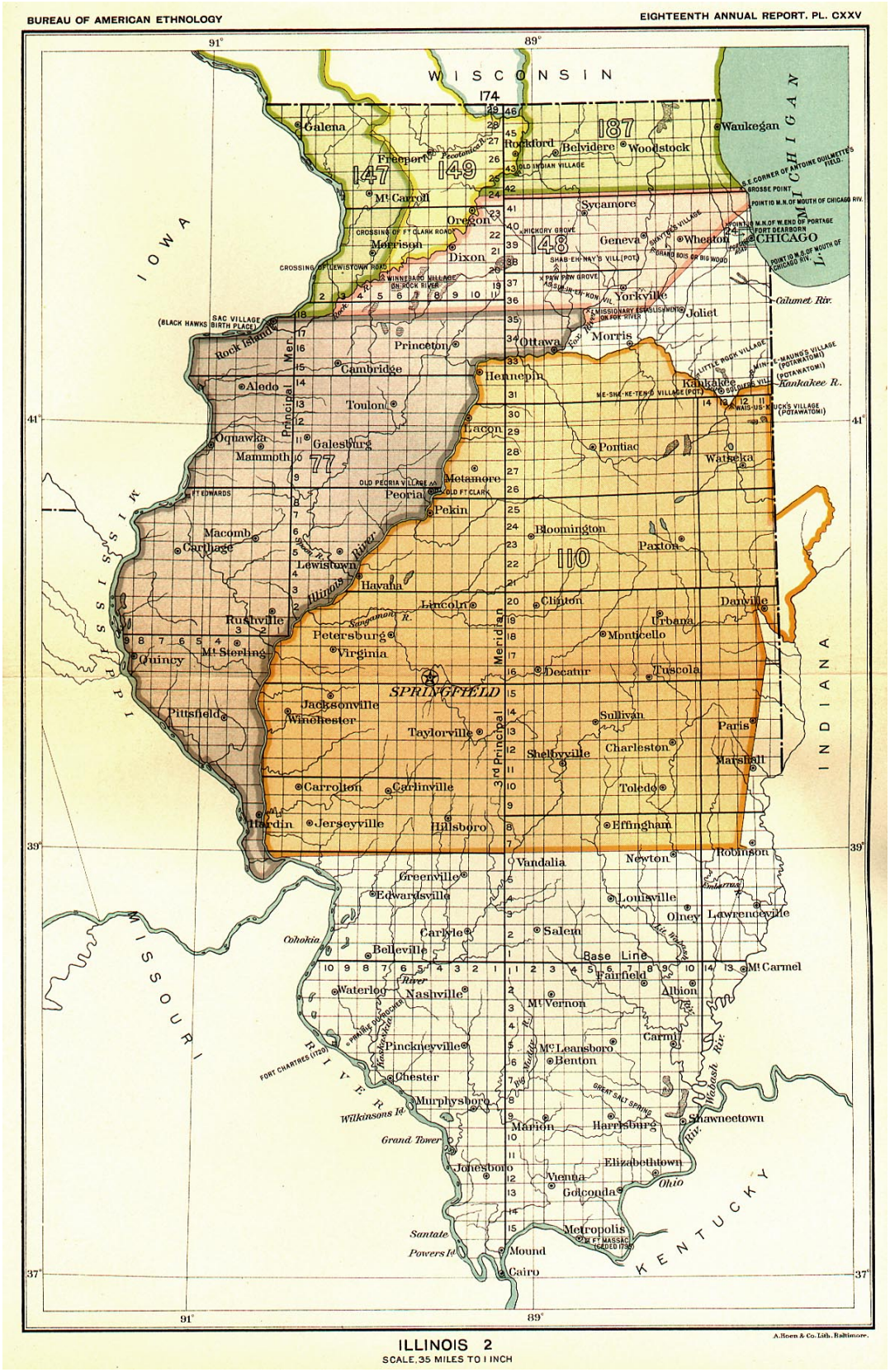
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Lacon
Pontiac
Watseka
Metamora
Peoria
Pekin
Bloomington
Paxton
Macomb
Carthage
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Pittsfield
Taylorville
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Hardin
Jerseyville
Hillsboro
Effingham
Vandalia
Newton
Robinson
Greenville
Edwardsville
Louisville
Olney
Lawrenceville
Carlyle
Salem
Belleville
Base Line
Fairfield
Mt Carmel
Waterloo
Nashville
Albion
Mt Vernon
Carmi
Pinckneyville
Mc Leansboro
Benton
Chester
Murphysboro
Wilkinsons Id
Grand Tower
Marion
Harrisburg
Shawneetown
Elizabethtown
Jonesboro
Vienna
Golconda
Ohio
Santale
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Metropolis
Mound
Cairo
Principal Meridian
3rd Principal Meridian
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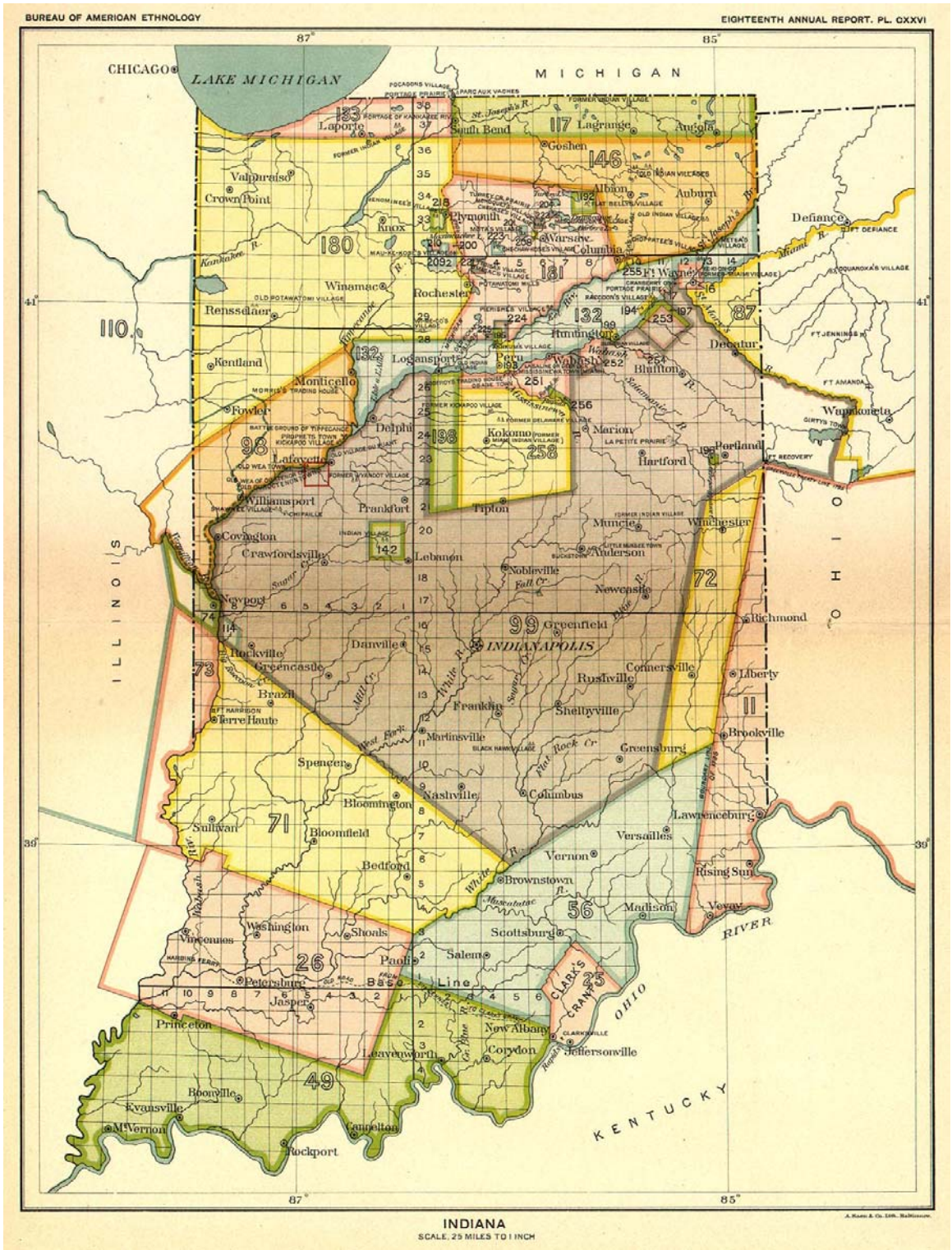
BUREAU OF AMERICAN ETHNOLOGY
EIGHTEENTH ANNUAL REPORT. PL. CXXVI
CHICAGO
LAKE MICHIGAN
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OHIO
INDIANAPOLIS
KENTUCKY
RIVER
Laporte
South Bend
Lagrange
Angola
Goshen
Valparaiso
Crown Point
Albion
Auburn
Defiance
Plymouth
Knox
Warsaw
Columbia
Ft Wayne
Winamac
Rochester
Rensselaer
Kentland
Logansport
Peru
Wabash
Huntington
Bluffton
Decatur
Monticello
Fowler
Delphi
Kokomo
Marion
Portland
Wapakoneta
Lafayette
Hartford
Williamsport
Frankfort
Tipton
Muncie
Winchester
Covington
Crawfordsville
Lebanon
Anderson
Noblesville
Newcastle
Richmond
Newport
Greenfield
Danville
Rockville
Greencastle
Rushville
Connersville
Liberty
Brazil
Terre Haute
Franklin
Shelbyville
Brookville
Martinsville
Greensburg
Spencer
Nashville
Columbus
Bloomington
Lawrenceburg
Sullivan
Bloomfield
Versailles
Vernon
Bedford
Brownstown
Rising Sun
Madison
Vevay
Washington
Vincennes
Shoals
Scottsburg
Salem
Paoli
Petersburg
Base Line
Jasper
Princeton
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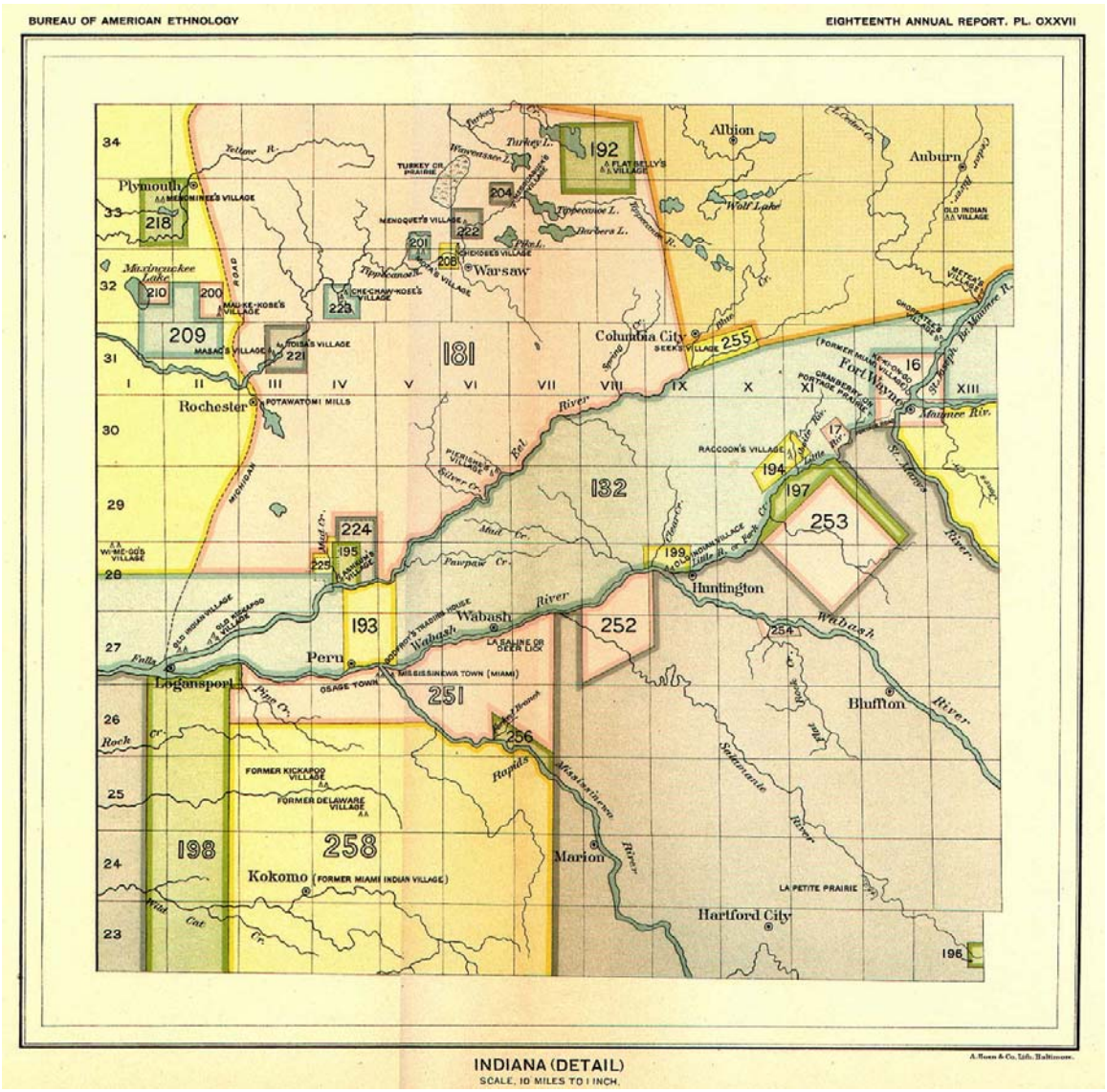

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A. Hoen & Co. Lith. Baltimore.

MICHIGAN 1
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EIGHTEENTH ANNUAL REPORT. PL. CXL
MANITOBA
BRITISH POSSESSIONS
Lake of the Woods
445
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LAKE SUPERIOR
WISCONSIN
IOWA
DAKOTA
MINNESOTA 1
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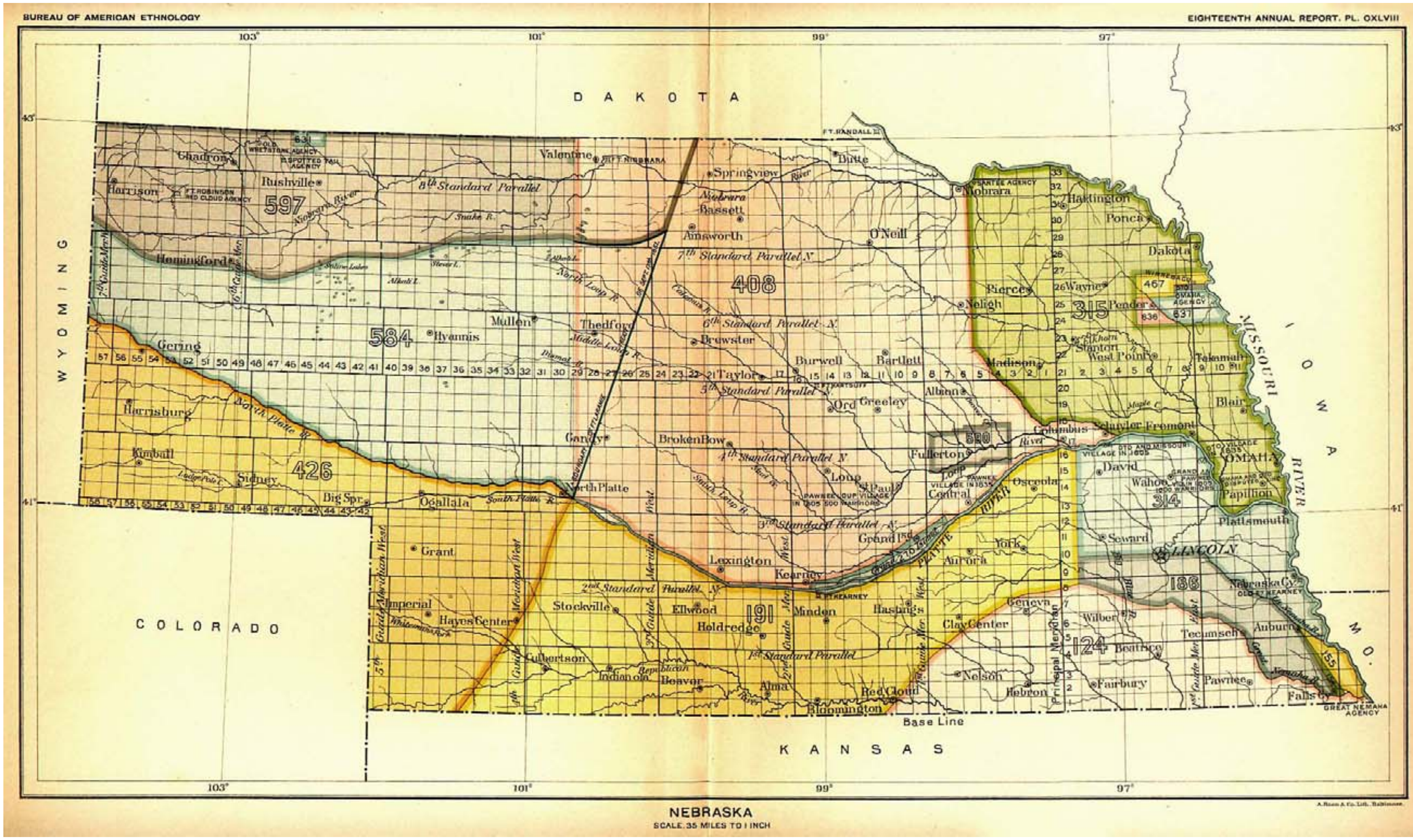

BUREAU OF AMERICAN ETHNOLOGY
EIGHTEENTH ANNUAL REPORT. PL. CXLVIII
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Chadron
Rushville
Harrison
Hemingford
Gering
Harrisburg
Kimball
Sidney
Big Spr.
Ogallala
North Platte
Grant
Imperial
Hayes Center
Culbertson
Indianola
Stockville
Valentine
Springview
Bassett
Ainsworth
Brewster
Mullen
Hyannis
Thedford
Gandy
Broken Bow
Taylor
Burwell
Bartlett
O'Neill
Butte
Niobrara
Hartington
Ponca
Dakota
Pierce
Neligh
Wayne
Pender
Stanton
West Point
Madison
Albion
Ord
Greeley
Loup
St. Paul
Fullerton
Central
Osceola
Columbus
Schuyler
Fremont
Tekamah
Blair
Omaha
David
Wahoo
Papillion
Plattsmouth
Seward
Lincoln
Nebraska Cy.
York
Aurora
Grand Isd.
Kearney
Lexington
Minden
Hastings
Holdredge
Ellwood
Beaver
Alma
Red Cloud
Bloomington
Clay Center
Geneva
Nelson
Hebron
Wilber
Beatrice
Fairbury
Tecumseh
Auburn
Pawnee
Falls Cy.
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6th Standard Parallel N.
5th Standard Parallel N.
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3rd Standard Parallel N.
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1st Standard Parallel
Base Line
Principal Meridian
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101°
99°
97°
43°
41°
NEBRASKA
SCALE 35 MILES TO 1 INCH


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EIGHTEENTH ANNUAL REPORT. PL. CLVI
MICHIGAN
LAKE ERIE
INDIANA
PENNSYLVANIA
KENTUCKY
WEST VIRGINIA
OHIO RIVER
Painesville
Jefferson
Chardon
CLEVELAND
Sandusky
Elyria
Medina
Akron
Ravenna
Warren
Youngstown
Norwalk
Toledo
Clinton
Wauseon
Napoleon
Bryan
Bowling Gr.
Fremont
Defiance
Paulding
Ottawa
Findlay
Van Wert
Upper Sandusky
Bucyrus
Ashland
Mansfield
Wooster
Canton
New Lisbon
Lima
Kenton
Celina
Wapakoneta
Marion
Mt Gilead
Millersburg
New Philadelphia
Carrollton
Steubenville
Cadiz
Mt Vernon
Bellefontaine
Sidney
Delaware
Goshocton
Marysville
Urbana
Greenville
Troy
Springfield
Newark
Cambridge
St Clairsville
COLUMBUS
Zanesville
London
Eaton
Dayton
Xenia
Lancaster
New Lexington
Caldwell
Woodsfield
Mc Connelsville
Circleville
Washington
Logan
Marietta
Hamilton
Lebanon
Wilmington
Chillicothe
Athens
Mc Arthur
Hillsboro
CINCINNATI
Batavia
Waverly
Jackson
Pomeroy
Georgetown
West Union
Portsmouth
Gallipolis
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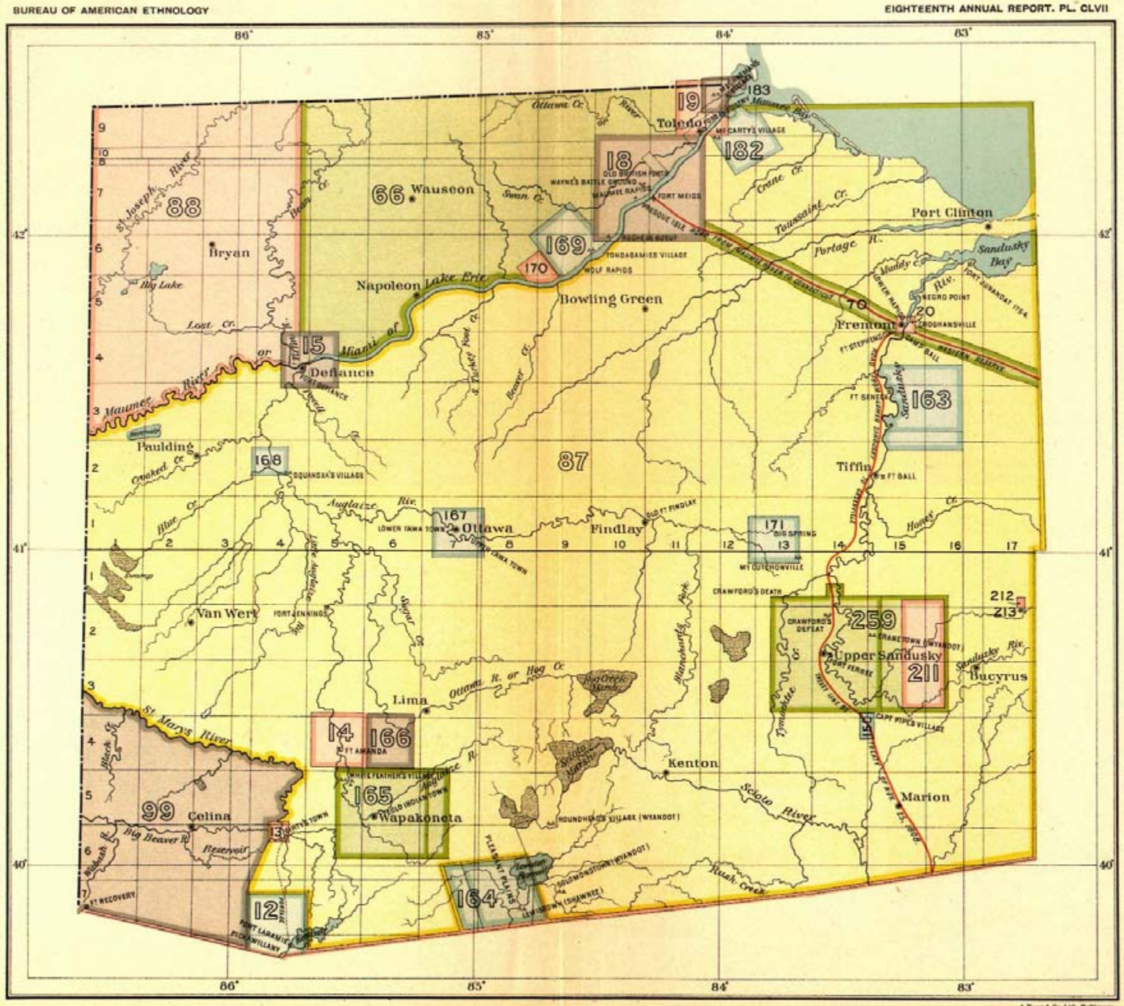
OHIO
SCALE, 25 MILES TO 1 INCH

BUREAU OF AMERICAN ETHNOLOGY

EIGHTEENTH ANNUAL REPORT. PL. CLVII



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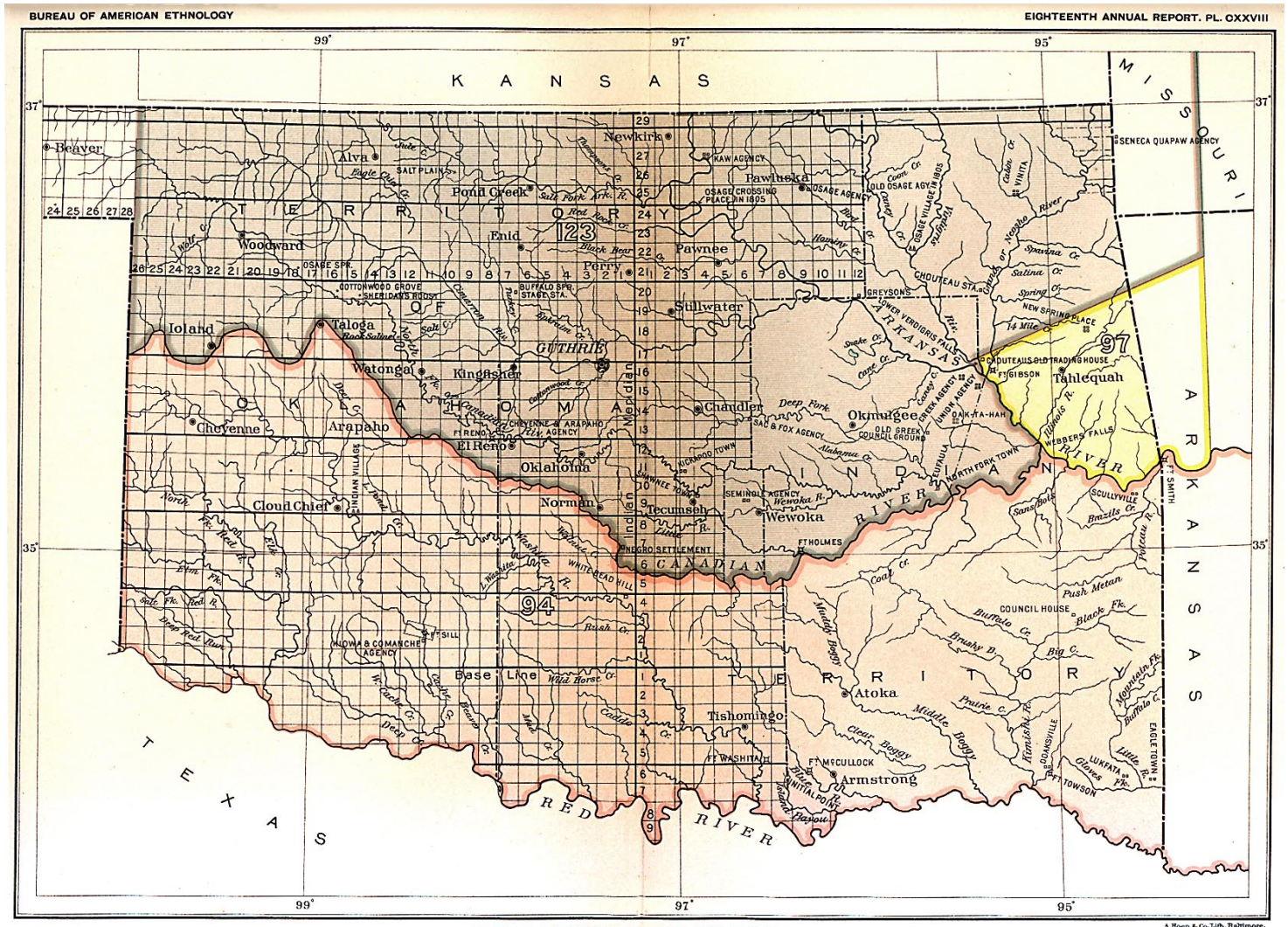

INDIAN TERRITORY AND OKLAHOMA 1

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APPENDIX D
TREATIES OF DISPUTED LEGAL VALIDITY

Treaty: Treaty with the Clatsop, 1851
Tribe(s): Clatsop
Geographic Area: Willamette Valley, Oregon Territory

Treaty Stipulation of Rights: Art. 3: "It is agreed between the United States and the said tribe, that the individuals of the said tribe shall be at liberty to occupy, as formerly, their fishing grounds at the mouth of Neacoxsa Creek, whenever they wish to do so for the purpose of fishing; and it is further agreed that the individuals of said tribe shall be allowed to pass freely along the beach from and to their reservation between their fishing grounds and Point Adams, and allowed to pick up whales that may be cast away on the beach."

Comment(s): These 1851 treaties were not formally ratified. However, Deloria and DeMallie (1999) justify their inclusion in their treaty listing based on the Indian Appropriation Act of 1906, which authorized investigation of the tribes involved in the treaties. The "Rolls of Certain Indian Tribes in Oregon and Washington" was subsequently published, and the Indian appropriation act for 1913 made appropriations to the tribes that "compensated the people and their descendants for the loss incurred because of the failure to ratify the treaties in 1852." The authors feel that the creation of the rolls was in effect the reconsitution of the tribes "for the purposes of affirming and fulfilling the treaties." Thus, both parties ratified the treaties by performance, and the treaties should carry legal force (206-207).

In contrast, Article 6 of the treaty states that "This treaty shall take effect and be obligatory on the contracting parties as soon as the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof." The 1935 U.S. Court of Claims decision in *Blackfeet v. United States* (81 Ct. Cl. 101) held that "negotiated but unratified treaties between the Government and tribal Indians providing that they are to become effective only when ratified are not binding, and the appropriation and expenditure of money by the Government in amounts and for purposes similar to or approximating those provided for in such treaties, and acceptance by the Indians of the benefits thereof, do not render effective or bind the parties to the terms of such treaties; and in the absence of positive proof that the tribes, as such, comprehended their rights and accepted such benefits from the Government as pursuant to such treaties, the doctrine of estoppel should not be applied against them to the extent of holding them estopped to deny the validity of the treaties."

Treaty: Treaty with the Naalem Band of the Tillamook, 1851
Tribe(s): Naalem band of Tillamook
Geographic Area: Willamette Valley, Oregon Territory

Treaty Stipulation of Rights: Article 2: "The said band reserve to themselves the privilege of occupying, for the purpose of fishing, two small spots of ground sufficient for building upon and for their horses to graze upon: one to be at the mouth and on the north side of the Naalem River, and the other at or near the rapids on the north fork of said river, together with the privilege of passing freely between these two places along the river."

Comment(s): These 1851 treaties were not formally ratified. However, Deloria and DeMallie (1999) justify their inclusion in their treaty listing based on the Indian Appropriation Act of 1906, which authorized investigation of the tribes involved in the treaties. The "Rolls of Certain Indian Tribes in Oregon and Washington" was subsequently published, and the Indian appropriation act for 1913 made appropriations to the tribes that "compensated the people and their descendants for the loss incurred because of the failure to ratify the treaties in 1852." The authors feel that the creation of the rolls was in effect the reconsitution of the tribes "for the purposes of affirming and fulfilling the treaties." Thus, both parties ratified the treaties by performance, and the treaties should carry legal force (206-207).

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Treaty: Treaty with the Lower Band of the Tillamook, 1851
Tribe(s): Lower band of Tillamook
Geographic Area: Willamette Valley, Oregon Territory

Treaty Stipulation of Rights: Art. 2: "The said tribe reserve to themselves the privilege of occupying, for the purpose of fishing, two small spots of ground sufficient for building their houses upon and for their horses to graze upon; one to be at the mouth and on the western side of the Neehurst River, the other near the headwaters of the Latinsh River."

Comment(s): These 1851 treaties were not formally ratified. However, Deloria and DeMallie (1999) justify their inclusion in their treaty listing based on the Indian Appropriation Act of 1906, which authorized investigation of the tribes involved in the treaties. The "Rolls of Certain Indian Tribes in Oregon and Washington" was subsequently published, and the Indian appropriation act for 1913 made appropriations to the tribes that "compensated the people and their descendants for the loss incurred because of the failure to ratify the treaties in 1852." The authors feel that the creation of the rolls was in effect the reconsitution of the tribes "for the purposes of affirming and fulfilling the treaties." Thus, both parties ratified the treaties by performance, and the treaties should carry legal force (206-207).

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Treaty: Treaty with the Waukikum Band of the Chinook, 1851
Tribe(s): Waukikum band of Chinook
Geographic Area: Willamette Valley, Oregon Territory

Treaty Stipulation of Rights: Art. 2: "The said Waukikum band reserve to themselves the privilege of occupying their present place of residence, and also of fishing upon the Columbia River and the two other streams mentioned in Article 1; also the privilege of cutting timber for their own building purposes and for fuel on the above-described land, and of hunting on said lands where they are not inclosed."

Comment(s): These 1851 treaties were not formally ratified. However, Deloria and DeMallie (1999) justify their inclusion in their treaty listing based on the Indian Appropriation Act of 1906, which authorized investigation of the tribes involved in the treaties. The "Rolls of Certain Indian Tribes in Oregon and Washington" was subsequently published, and the Indian appropriation act for 1913 made appropriations to the tribes that "compensated the people and their descendants for the loss incurred because of the failure to ratify the treaties in 1852." The authors feel that the creation of the rolls was in effect the reconsitution of the tribes "for the purposes of affirming and fulfilling the treaties." Thus, both parties ratified the treaties by performance, and the treaties should carry legal force (206-207).

In contrast, Article 6 of the treaty states that "This treaty shall take effect and be obligatory on the contracting parties as soon as the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof." The 1935 U.S. Court of Claims decision in *Blackfeet v. United States* (81 Ct. Cl. 101) held that "negotiated but unratified treaties between the Government and tribal Indians providing that they are to become effective only when ratified are not binding, and the appropriation and expenditure of money by the Government in amounts and for purposes similar to or approximating those provided for in such treaties, and acceptance by the Indians of the benefits thereof, do not render effective or bind the parties to the terms of such treaties; and in the absence of positive proof that the tribes, as such, comprehended their rights and accepted such benefits from the Government as pursuant to such treaties, the doctrine of estoppel should not be applied against them to the extent of holding them estopped to deny the validity of the treaties."

Treaty: Treaty with the Kathlamet Band of Chinook, 1851
Tribe(s): Kathlamet band of Chinook
Geographic Area: Willamette Valley, Oregon Territory

Treaty Stipulation of Rights: Art. 2: "The said Kathlamet band reserve from the cession aforesaid, two of the islands in the Columbia River, to wit: one called Woody Island, and one called by the Indians Sky-lie-la. The said band also reserve the privilege of residing at what is called the old Kathlamet town, and of cutting timber on the land above described for their own fuel and building purposes."

Comment(s): These 1851 treaties were not formally ratified. However, Deloria and DeMallie (1999) justify their inclusion in their treaty listing based on the Indian Appropriation Act of 1906, which authorized investigation of the tribes involved in the treaties. The "Rolls of Certain Indian Tribes in Oregon and Washington" was subsequently published, and the Indian appropriation act for 1913 made appropriations to the tribes that "compensated the people and their descendants for the loss incurred because of the failure to ratify the treaties in 1852." The authors feel that the creation of the rolls was in effect the reconsitution of the tribes "for the purposes of affirming and fulfilling the treaties." Thus, both parties ratified the treaties by performance, and the treaties should carry legal force (206-207).

In contrast, Article 6 of the treaty states that "This treaty shall take effect and be obligatory on the contracting parties as soon as the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof." The 1935 U.S. Court of Claims decision in *Blackfeet v. United States* (81 Ct. Cl. 101) held that "negotiated but unratified treaties between the Government and tribal Indians providing that they are to become effective only when ratified are not binding, and the appropriation and expenditure of money by the Government in amounts and for purposes similar to or approximating those provided for in such treaties, and acceptance by the Indians of the benefits thereof, do not render effective or bind the parties to the terms of such treaties; and in the absence of positive proof that the tribes, as such, comprehended their rights and accepted such benefits from the Government as pursuant to such treaties, the doctrine of estoppel should not be applied against them to the extent of holding them estopped to deny the validity of the treaties."

Table 3: Treaties of Disputed Validity

	Treaty	Treaty Area	Reserved Rights
1.	Treaty with the Clatsop, 1851	Willamette Valley, Oregon Territory	Tribal members at liberty to occupy fishing grounds at the mouth of Neacoxsa Creek, pass freely along the beach from and to their reservation between their fishing grounds and Point Adams, and allowed to pick up whales that may be cast away on the beach
2.	Treaty with the Naalem Band of the Tillamook, 1851	Willamette Valley, Oregon Territory	Band reserves the privilege of occupying, for the purpose of fishing, two specified tracts of ground, for building on and for their horses to graze upon; together with the privilege of passing freely between these two places along the river
3.	Treaty with the Lower Band of the Tillamook, 1851	Willamette Valley, Oregon Territory	Tribe reserves the privilege of occupying, for the purpose of fishing, two specified tracts for building their houses upon and for their horses to graze upon
4.	Treaty with the Waukikum Band of the Chinook, 1851	Willamette Valley, Oregon Territory	Band reserves the privilege of occupying their present place of residence; fishing on the Columbia River and two other streams; the privilege of cutting timber for their own building purposes and for fuel; and hunting on said lands
5.	Treaty with the Kathlamet Band of Chinook, 1851	Willamette Valley, Oregon Territory	Band reserves two islands in the Columbia River, the privilege of residing at old Kathlamet town, and the right to cut timber on specified land for their own fuel and building purposes

APPENDIX E
SUMMARY OF COURT CASES CITED IN CHAPTER FOUR

Minnesota, et al., Petitioners v. Mille Lacs Band Of Chippewa Indians et al, 526 U.S. 172 (1999)

Issue: 1837 treaty (7 Stat. 536) reserves usufructuary rights. State argues that those rights were terminated by one or all of three methods: (1) 1850 removal order abrogated rights; (2) 1855 treaty which ceded "right, title, and interest" ceded usufructuary rights (10 Stat., 1165); and (3) MN admission to statehood terminated rights (relying on *Race Horse*).

Court Decision: Bands retain rights

From Lexis-Nexus Summary:
"In an opinion by O'Connor, J., joined by Stevens, Souter, Ginsburg, and Breyer, JJ., it was held that the Chippewa bands retained the usufructuary rights guaranteed to them under the 1837 treaty, as (1) the 1850 executive order was ineffective to terminate the usufructuary rights, where (a) the state had pointed to no statutory or constitutional authority for the President's removal order, and (b) the part of the executive order that revoked the usufructuary rights was not severable from the invalid removal order; (2) an analysis of the history, purpose, and negotiations of the 1855 treaty led to the conclusion that the Mille Lacs Band did not relinquish their 1837 treaty rights in the 1855 treaty; and (3) the 1858 admission of Minnesota into the United States did not terminate the usufructuary rights, where (a) there was no clear evidence that in the enabling act Congress intended to abrogate the usufructuary rights, and (b) because treaty rights were reconcilable with state sovereignty over natural resources, statehood by itself was insufficient to extinguish the usufructuary rights."

South Dakota, Petitioner V. Gregg Bourland, Etc., et al., 508 U.S. 679 (1993)

Issue: Whether the Cheyenne River Sioux has the authority to regulate hunting by non-tribal members on the land ceded from their reservation in 1954 for the Oahe Dam Project.

Facts: 1868 Laramie Treaty established Great Sioux Reservation, to be held for "absolute and undisturbed use and occupation" of the Sioux. 1889 Act dividing reservation into several smaller reservations (including Cheyenne River Reservation) preserved rights of 1868 treaty "not in conflict" with the Act. The Flood Control Act of 1944 directed establishment of flood control plan on Missouri River (eastern border of Cheyenne River Reservation), directed Army Chief of Engineers to "construct, maintain, and operate public park and recreational facilities in reservoir areas" and provided that "reservoirs "shall be open to public use generally." Cheyenne River Act of 1954 (1954 agreement with tribe) was for the Oahe Dam and Reservoir Project. Tribe agreed to "convey to the United States all tribal, allotted, assigned, and inherited lands or interests" needed for the project.

Decision: By the Acts of 1944 and 1954, Congress abrogated the Tribe's rights under 1868 treaty to regulate hunting and fishing by non-Indians in the area taken for the Oahe Dam and Reservoir Project. The Flood Control act "affirmatively allows non-Indians to hunt and fish on such lands, subject to federal regulation." Cheyenne River Act gives tribe right to hunt and fish subject to "regulations governing the corresponding use by other citizens of the United States."

Note: The 1954 agreement also reserves mineral and grazing rights, which are not addressed in this case.

United States v. Sioux Nation of Indians Et. Al. 448 U.S. 371 (1980)

Issue: The taking of the Black Hills

Lexis-Nexis Summary:
"In 1920, the Sioux Indian Nation--upon passage of a special jurisdictional act granting them a mechanism to litigate longstanding claims--brought suit in the United States Court of Claims against the United States, alleging that the government had taken the Black Hills from them without just compensation in violation of the Fifth Amendment. The United States, under the Fort Laramie Treaty of 1868 (15 Stat 635), had originally pledged that the Great Sioux Reservation, including the Black Hills, would be set aside for the absolute and undisturbed use and occupation of the Sioux. The treaty also provided that no treaty for the cession of any portion of the reservation would be valid unless signed by at least three fourths of the adult male Sioux. In 1876, a special Commission representing the United States presented a new treaty to the Sioux under which the Sioux were to relinquish their rights to the Black Hills in exchange for subsistence rations for as long as they would be needed to ensure survival of the Sioux. The treaty was signed by only ten percent of the adult male Sioux population, but Congress resolved the impasse in 1877 by enacting the "agreement" into law (19 Stat 254), thereby abrogating the Fort Laramie Treaty. In 1942, the Court of Claims dismissed the claim of the Sioux, concluding that it was not authorized to question whether the compensation afforded the Sioux by Congress in 1877 was an adequate price for the Black Hills, and that the claim of the Sioux was a moral claim not protected by the just compensation clause of the Fifth Amendment. Congress then passed, in 1946, the Indian Claims Commission Act (25 USCS 70 et seq.), creating a new forum to hear and determine all previous tribal grievances. The Sioux resubmitted their claim to the Indian Claims Commission, which ultimately held that the 1942 Court of Claims decision did not bar the Indians' Fifth Amendment taking claim through application of the doctrine of res judicata, and that the government was required to pay the Indians just compensation for the taking of the Black Hills. On appeal, the Court of Claims affirmed the Commission's holding that the government had acquired the Black Hills through a course of unfair and dishonest dealings for which the Sioux were entitled to damages of over $ 17 million, without interest, under 2 of the Indian Claims Commission Act (25 USCS 70a(5)), but, without reaching the merits of the claim, the court held that the just compensation claim was barred by the res judicata effect of its 1942 decision. According to the court, the Sioux would be entitled to interest only if the government's acquisition of the Black Hills amounted to an unconstitutional taking. Congress thereupon passed a statute in 1978 (25 USCS 70a(b)) authorizing the Court of Claims to take new evidence in the case, and to conduct its review of the merits de novo without regard to the defense of res judicata. Applying the test of whether Congress had made a good faith effort to give the Indians the full value of their land, the Court of Claims affirmed the Commission's holding that the 1877 Act effected a taking of the Black Hills, and awarded to the Sioux interest of five percent on the principal sum of $ 17.1 million, dating from 1877. (220 Ct Cl 442, 601 F2d 1157).

On certiorari, the United States Supreme Court affirmed. In an opinion by Blackmun, J., joined by Burger, Ch. J., and Brennan, Stewart, Marshall, Powell, and Stevens, JJ., and joined in part (as to holdings (1) and (3) below) by White, J., it was held that (1) Congress' mere waiver of the res judicata effect of a prior judicial decision rejecting the validity of a legal claim against the United States does not violate the doctrine of separation of powers, and accordingly, the 1978 Amendment to 20(b) of the Indian Claims Commission Act (25 USCS 70s(b)), which authorizes the Court of Claims to take new evidence in the case, and to review the case on its merits without regard to the defense of res judicata, did not violate the doctrine of separation of powers either on the ground that Congress disturbed the finality of a judicial decree by rendering the Court of Claims' earlier judgment in the case a mere advisory opinion, or on the ground that Congress overstepped its bounds by granting the Court of Claims jurisdiction to decide the merits of the Black Hills claim while prescribing a rule that left the court no adjudicatory function to perform, (2) the Court of Claims, in determining that the United States' acquisition of the Black Hills constituted a taking compensable under the just compensation clause, properly inquired into whether Congress made a good faith effort to give the Sioux the full value of the Black Hills, an essential element

of the inquiry involving a determination of the adequacy of the consideration the government gave for the Indian lands it acquired, the presumption that Congress acted in perfectly good faith in its dealings and that it exercised its best judgment being inappropriate in this situation, and (3) the government was obligated under the Fifth Amendment to make just compensation to the Sioux, including an award of interest to the Sioux on the principal sum."

Note on the hunting rights ceded in the agreement (near end of court opinion)
'Second, it seems readily apparent to us that the obligation to provide rations to the Sioux was undertaken in order to ensure them a means of surviving their transition from the nomadic life of the hunt to the agrarian lifestyle Congress had chosen for them. Those who have studied the Government's reservation policy during this period of our Nation's history agree. See n. 11, supra. It is important to recognize [*423] that the 1877 Act, in addition to removing the Black Hills from the Great Sioux Reservation, also ceded the Sioux' hunting rights in a vast tract of land extending beyond the boundaries of that reservation. See n. 14, supra. Under such circumstances, it is reasonable to conclude that Congress' undertaking of an obligation to provide rations for the Sioux was a quid pro quo for depriving them of their chosen way of life, and [**2745] was not intended to compensate them for the taking of the Black Hills. n33

Footnote 33: "We find further support for this conclusion in Congress' 1974 amendment to § 2 of the Indian Claims Commission Act, 25 U. S. C. § 70a. See n. 17, supra. That amendment provided that in determining offsets, "expenditures for food, rations, or provisions shall not be deemed payments on the claim." The Report of the Senate Committee on Interior and Insular Affairs, which accompanied this amendment, made two points that are pertinent here. First, it noted that "[although] couched in general terms, this amendment is directed to one basic objective -- expediting the Indian Claims Commission's disposition of the famous Black Hills case." S. Rep. No. 93-863, p. 2 (1974) (incorporating memorandum prepared by the Sioux Tribes). Second, the Committee observed:

"The facts are, as the Commission found, that the United States disarmed the Sioux and denied them their traditional hunting areas in an effort to force the sale of the Black Hills. Having violated the 1868 Treaty and having reduced the Indians to starvation, the United States should not now be in the position of saying that the rations it furnished constituted payment for the land which it took. In short, the Government committed two wrongs: first, it deprived the Sioux of their livelihood; secondly, it deprived the Sioux of their land. What the United States gave back in rations should not be stretched to cover both wrongs." Id., at 4-5. "

Notes:

- This could be interpreted to say that hunting rights were lost in agreement. If the treaty was abrogated by the Act authorizing the taking of the Black Hills, are the hunting rights reserved in the treaty necessarily abrogated also?
- But the Act could be interpreted as a "taking" of the hunting rights regardless. There was money tendered for the loss of hunting rights, whereas no money was supplied for Black Hills land itself. So that could mean the hunting rights were extinguished by the Act.
- Ultimately, the case is about the land, not the hunting rights, and consultation with the Sioux should be undertaken to discuss the hunting rights.

Further Note: The Sioux have thus far refused all payment for the Black Hills awarded in this case and wish to reacquire the land itself.

Washington et al. v. Washington State Commercial Passenger Fishing Vessel Association et al. 443 U.S. 658 (1979)

Treaties: Treaty of Medicine Creek, 10 Stat. 1132; Treaty of Point Elliott, 12 Stat. 927; Treaty of Point No Point, 12 Stat. 933; Treaty of Neah Bay, 12 Stat. 939; Treaty with the Yakamas, 12 Stat. 951; and Treaty of Olympia, 12 Stat. 971.

Tribes: "The parties to the treaties and to this litigation include these Indian tribes: Hoh; Lower Elwha Band of Clallam Indians; Lummi; Makah; Muckleshoot; Nisqually; Nooksack; Port Gamble Band of Clallam Indians; Puyallup; Quileute; Quinault; Sauk-Suiattle; Skokomish; Squaxin Island; Stillaguamish; Suquamish; Swinomish; Tulalip; Upper Skagit; and Yakima Nation."

Decision: Indians have a right to harvest share of each run of anadromous fish passing through tribal fishing grounds in Washington state area.

Lexis Headnote 2A and 2B: "The language in Indian treaties (10 Stat 1132, 12 Stat 927, 933, 939, 951, 971) securing for Indians their "right of taking fish at usual and accustomed grounds and stations … in common with all citizens of the Territory," as part of the exchange for their having relinquished their interest in land located in what became the State of Washington, does not guarantee merely access to the fishing sites and an equal opportunity for Indians and non-Indians to fish, but rather secures to the Indian tribes a right to harvest a share of each run of anadromous fish that passes through tribal fishing areas; nontreaty fisherman may not rely on property concepts, devices such as the fish wheel, license fees, or general regulations to deprive the Indians of a fair share of relevant runs of anadromous fish, but neither may treaty fishermen rely on their exclusive right of access to fishing sites on Indian reservations to destroy the rights of other "citizens of the Territory." (Powell, Stewart, and Rehnquist, JJ., dissented from this holding.)

Puyallup Tribe, Inc., et al. v. Department Of Game of Washington et al., 433 U.S. 165 (1977)

- Concerned regulation of <u>on-reservation</u> fishing rights; court held that on-reservation state regulation was necessary for conservation program.

Lexis-Nexis Headnotes:
Headnote: [5]: "Under the Treaty of Medicine Creek (10 Stat 1132), which provides that the Puyallup Reservation is set apart for the exclusive use of the Puyallup Indians and further provides that no white man shall be permitted to reside upon the reservation without permission of the Tribe and the superintendent or agent, the Puyallup Indians do not have a right to fish on the reservation free from state interference or possess an exclusive right to take steelhead trout which pass through the reservation; although the state, under the treaty, may not deny the Indians their right to fish at all usual and accustomed places, the treaty right is to be exercised in common with all citizens of the territory, and the right to fish at those respective places is not an exclusive one, but rather, the exercise of that right is subject to reasonable regulation by the state pursuant to its power to conserve an important natural resource. (Brennan and Marshall, JJ., dissented from this holding.)"

Headnote: [6A] [6B]: "Under Article III of the Treaty of Medicine Creek (10 Stat 1132), which gives the members of the Puyallup Tribe the right to fish at all usual and accustomed grounds and stations, the right of the tribal members to fish on ceded lands within the confines of the Puyallup Reservation is protected."

Headnote: [7A] [7B]: "Article III of the Treaty of Medicine Creek (10 Stat 1132), which provides that the right of taking fish, at all usual and accustomed grounds and stations, is secured to the Puyallup

Indians in common with all citizens of the territory, effects, to the treaty fishermen, a reservation of a previously exclusive right, and also recognizes that the right is to be shared in common with the non-Indian citizens of the territory."

Headnote: [8] "State courts did not fail to apply a standard of conservation necessity in determining fishing rights of Puyallup Indians under the Treaty of Medicine Creek (10 Stat 1132) where the state trial court (1) conducted a two-week trial which was dominated by expert testimony, (2) determined, from the testimony and accompanying exhibits, the number of steelhead trout in the river and how many could be taken without diminishing the number in future years, and (3) allocated 45 percent of the annual natural steelhead run available to the Indian fishermen's net fishery."

Antoine Et Ux. v. Washington, 420 U.S. 194 (1975)

Issue: Whether tribal members are immune from state game laws on land ceded to Government by agreement of 1891 (land is in Ferry County, WA). Agreement of May 9, 1891 states that "the right to hunt and fish in common with all other persons on lands not allotted to said Indians shall not be taken away or in anywise abridged."

Finding: Court held that state game laws do not apply, agreements are essentially the same as treaties and fall under the supremacy clause.

Notes:

- Although the agreement states the rights are "in common with" other citizens, the Court states that the tribe is still immune from state laws: "The ratifying legislation must be construed to exempt the Indians' preserved rights from like state regulation, however, else Congress preserved nothing which the Indians would not have had without that legislation."
- "It has long been settled that a grant of rights—in the first case, fishing rights—on an equal footing with citizens of the United States would not be construed as a grant only of such rights as other inhabitants had" (citing *Winans*).
- "We would strain hard to find an implied exception for parcels in the ceded tract that ended in private ownership" (although the issue was not about hunting on private lands).

Department of Game of Washington v. Puyallup Tribe et al., 414 U.S. 44 (1973)

Summary:

- Issue of ban on net fishing for steelhead. Since only Indians used set gill nets to catch steelhead, Justice Douglas found that the regulation essentially guaranteed the entire catch to sport fisherman and therefore discriminated against the treaty Indians. State must regulate fishing so that the steelhead runs are fairly apportioned between Indian net and non-Indian sport fishers.
- Involved off-reservation rights.

Lexis-Nexus Syllabus: "Commercial net fishing by Puyallup Indians, for which the Indians have treaty protection, Puyallup Tribe v. Dept. of Game, 391 U.S. 392, forecloses the bar against net fishing of steelhead trout imposed by Washington State Game Department's regulation, which discriminates against

the Puyallups, and as long as steelhead fishing is permitted, the regulation must achieve an accommodation between the Puyallups' net-fishing rights and the rights of sports fishermen."

Puyallup Tribe v. Department of Game of Washington et al., 391 U.S. 392 (1968)
Treaty: Treaty of Medicine Creek, 10 Stat. 1132 (Dec. 26, 1854)
Tribes: Puyallup, Nisqually
Summary:

- While a state may not prevent Indians from fishing at their accustomed grounds, it may impose controls on the manner of fishing and size of a take provided that any such regulation is "in the interest of conservation,…meets appropriate standards and does not discriminate against the Indians."
- Signaled the end of litigation concerning the issue of whether a state has any power to regulate Indian off-reservation fishing.
- Involved off-reservation rights.

Lexis-Nexus Summary:
"An 1854 federal treaty provided that members of two Indian tribes in Washington had "the right of taking fish, at all usual and accustomed grounds and stations, ... in common with all citizens of the Territory." Many years later, after Washington had become a state, its legislature prohibited the use of set nets for catching salmon or steelhead, prohibited the taking of steelhead for commercial purposes, and required that certain types of nets be used for the taking of salmon for commercial purposes. In violation of this legislation, members of the two tribes continued to use set nets to catch salmon and steelhead for commercial purposes, as they had done even before the 1854 treaty. The Washington Department of Game brought suit in the Washington state courts to obtain declaratory and injunctive relief against such violations, and the requested relief was granted. On appeal, the Washington Supreme Court held that although commercial fishing by set nets may have been customary at the time of the treaty, the state could constitutionally regulate the manner of the Indians' fishing, and the case was remanded for further findings as to the reasonableness of the legislation as a method of conservation. (70 Wash 2d 245, 422 P2d 754; 70 Wash 2d 275, 422 P2d 771.)

On certiorari, the United States Supreme Court affirmed. In an opinion by Douglas, J., expressing the unanimous view of the court, it was held that the treaty provisions did not preclude the state from regulating the manner of fishing and restricting commercial fishing in the interest of conservation, provided that such regulation was a reasonable and necessary exercise of the state's police power and did not discriminate against the Indians."

Tulee v. State of Washington, 315 U.S. 681 (1942)

Tribe: Yakima
Treaty: Treaty with the Yakima, 12 Stat. 951 (June 9, 1855)
Summary: State of Washington could regulate fishing as necessary for conservation purposes, but could not charge a license fee on what was a federal right.
Lexis-Nexus Syllabus: "Under the provision of the treaty of May 29, 1855, with the Yakima Indians, reserving to the members of the tribe the right to take fish "at all usual and accustomed places, in common with the citizens" of Washington Territory, the State of Washington has the power to impose on the Indians equally with others such restrictions of a purely regulatory nature concerning the time and manner

of fishing outside the reservation as are necessary for the conservation of fish, but it can not require them to pay license fees that are both regulatory and revenue-producing."

United States v. Winans, 198 U.S. 371 (1905)

Treaty: Yakima, 1855, 12 Stat. 951
Issue: The United States sought to prevent Winans from excluding the Yakima from his property (which was abutting traditional fishing grounds)
Decision:

- "The right of taking fish "at all usual and accustomed places in common with the citizens of the territory" of Washington, and of "erecting temporary buildings for curing them," secured to the Yakima by the treaty of 1859, survives the private acquisition of lands bordering on the Columbia river by grants from the United States or state of Washington."
- Indians could assert this right against the United States and all subsequent grantees
- Fishing rights were tantamount to an easement—gave Indians the right to cross and occupy private land to the extent the Indians needed access for fishing and erecting temporary shelters to cure their catch.

Lexis-Nexus Syllabus: "This court will construe a treaty with Indians as they understood it and as justice and reason demand.

The right of taking fish at all usual and accustomed places in common with the citizens of the Territory of Washington and the right of erecting temporary buildings for curing them, reserved to the Yakima Indians in the treaty of 1859, was not a grant of right to the Indians but a reservation by the Indians of rights already possessed and not granted away by them. The rights so reserved imposed a servitude on the entire land relinquished to the United States under the treaty and which, as was intended to be, was continuing against the United States and its grantees as well as against the State and its grantees.

The United States has power to create rights appropriate to the object for which it holds territory while preparing the way for future States to be carved therefrom and admitted to the Union; securing the right to the Indians to fish is appropriate to such object, and after its admission to the Union the State cannot disregard the right so secured on the ground of its equal footing [***2] with the original States.

Patents granted by the United States for lands in Washington along the Columbia River and by the State for lands under the water thereof and rights given by the State to use fishing wheels are subject to such reasonable regulations as will secure to the Yakima Indians the fishery rights reserved by the treaty of 1859."

Ward v. Race Horse, 163 U.S. 504 (1896)

Tribes/Treaties: Bannock; 1868 treaty with the Shoshone Bannock, 15 Stat. 673

Lexis-Nexus Syllabus: "The provision in the treaty of February 24, 1869, with the Bannock Indians, whose reservation was within the limits of what is now the State of Wyoming, that "they shall have the right to hunt upon the unoccupied lands of the United States so long as game may be found thereon," etc.,

does not give them the right to exercise this privilege within the limits of that State in violation of its laws."

NOTE: In *Minnesota v. Mille Lacs* 526 U.S. 172 (1999) Supreme Court notes that:

- *Race Horse* "has been qualified by later decisions of this Court."
- "The *Race Horse* Court's reliance on the equal footing doctrine to terminate Indian treaty rights rested on foundations that were rejected by this Court within nine years of that decision."
- "*Race Horse* rested on a false premise. As this Court's subsequent cases have made clear, an Indian tribe's treaty rights to hunt, fish, and gather on state land are not irreconcilable with a State's sovereignty over the natural resources in the State."
- In *Race Horse*, the court (in addition to "equal footing") announced an alternative holding: "the Treaty rights at issue were not intended to survive Wyoming's statehood….the particular rights in the treaty at issue there—"the right to hunt on the unoccupied lands of the United States"—were not intended to survive statehood."
- "the "temporary and precarious" language in Race Horse is too broad to be useful in [**1206] distinguishing rights that survive statehood from those that do not. In Race [*207] Horse, the Court concluded that the right to hunt on federal lands was temporary because Congress could terminate the right at any time by selling the lands. 163 U.S. at 510. Under this line of reasoning, any right created by operation of federal law could be described as "temporary and precarious," because Congress could eliminate the right whenever it wished. In other words, the line suggested by Race Horse is simply too broad to be useful as a guide to whether treaty rights were intended to survive statehood." In other words, there is no real distinction between "temporary" and "perpetual" rights in the wording of the treaties.

Note: In "*Treaty Interpretation in the 20th Century: What Does "During the Pleasure of the President" Mean?*" (76 U. Det. Mercy L. Rev. 821) Michelle L. Alamo & Joseph A. Lucas discuss this case in relation to *Race Horse*: "Mille Lacs is significant to future Indian treaty disputes because it expressly limits the "temporary and precarious"/"perpetual and continuing" distinction announced by the Supreme Court in Ward v. Racehorse. The Supreme Court's holding is directly contrary to the Tenth Circuit's holding in Crow Tribe v. Repsis, which distinguished between state regulation of perpetual rights, which allowed rights to continue under the Equal Footing Doctrine subject only to reasonable and necessary conservation regulations, and temporary rights, which were automatically extinguished under the Equal Footing Doctrine and, therefore, subject to outright regulation by the state. Under the standard announced by the Supreme Court in Mille Lacs, the distinction between temporary and perpetual rights was abolished, all rights are reconcilable with the state's sovereign power to regulate hunting and fishing activities and, therefore, all rights will presumptively survive an Equal Footing Doctrine challenge. Unless Congress announced a clear intent to extinguish the rights upon statehood, the rights will not be automatically abrogated. This is a significant victory for Indian tribes."

United States, et al. v. State of Washington, 235 F.3d 438 (9th Cir. 2000)

(United States Of America; Suquamish Indian Tribe; Lower Elwha Bank Of Klallams, Lower Elwha Band Of S'klallams; Jamestown Band Of Klallams, Jamestown Band Of S'klallams; Port Gamble Band Of Klallams, Port Gamble Band Of S'klallams; Skokomish Indian Tribe; Puyallup Tribe; Makah Indian Tribe; Tulalip Tribe; Muckleshoot Indian Tribe; Nisqually Indian Tribe; Swinomish Indian Tribal Community; Hoh Indian Tribe; Nooksack Indian Tribe; Quileute Indian Tribe; Upper Skagit Tribe, Et

Al., Plaintiffs, And Quinault Indian Nation; Chehalis Indian Reservation; Shoalwater Bay Indian Tribe, Plaintiffs-Appellees, V. State Of Washington, Defendant-Appellant, And Coast Oyster Company, Defendant.)

Treaty: Treaty with the Quinaiet, Etc., 1855 (Treaty of Olympia)
Issue: Whether the fish obtained by the Confederated Tribes of the Chehalis Reservation on-reservation would be counted as part of "treaty share" or "state share" of allocation under *Boldt*.

Decision: Court concludes that because the Chehalis were not a party to the treaties, and do not possess off-reservation fishing rights, "they cannot be considered a treaty tribe for the purposes of equitable allocation of salmon under those treaties."

United States v. Muckleshoot Indian Tribe, 235 F.3d 429 (9th Cir. 2000)
(United States Of America, et al., Plaintiffs, And Puyallup Indian Tribe; Suquamish Indian Tribe; Swinomish Indian Tribal Community, Intervenor-Plaintiffs/Petitioners-Appellees, V. Muckleshoot Indian Tribe, Intervenor-Plaintiff/Respondent-Appellant, V. State Of Washington, et al., Defendants)

Issue/Opinion: This appeal concerns the limits of the Muckleshoot Tribe's saltwater usual and accustomed fishing area under the Boldt Decision. Because we agree with the district court that the Muckleshoot's saltwater usual and accustomed fishing area, as found by Judge Boldt, was limited to Elliott Bay, we affirm the grant of summary judgment for the Puyallup, Suquamish, and Swinomish Tribes.

Crow Tribe of Indians v. Repsis, 73 F.3d 982 (10th Cir. 1996)
(Crow Tribe Of Indians, Plaintiff-Appellant, And Thomas L. Ten Bear, Plaintiff, V. Chuck Repsis, Individually; Francis Petera, Individually, Defendants-Appellees, Shoshone-Bannock Tribes, Northern Arapahoe Tribe, Northern Cheyenne Tribe, The Oglala Sioux Tribe, Eastern Shoshone Tribe Of The Wind River Reservation, State Of Montana, State Of Colorado, State Of Idaho,State Of South Dakota, State Of Utah, Amici Curiae.)

Issue: Thomas Ten Bear cited for killing an elk on lands in the Big Horn National Forest without a Wyoming game license. Ten Bear argues that his activity was permissible under the1868 Treaty (15 Stat. 649) allowing hunting in "unoccupied lands of the United States."

Court Findings: Tribal hunting is subject to state regulation—hunting right was terminated by the establishment of the Big Horn National Forest in 1887.

Notes:

- The Crow Tribe relied, in part, on the argument that *Ward v. Race Horse* had been overturned by subsequent cases (*Winans, Pullayup, etc.)*. They argued that in *Race Horse* the defendant argued he was immune from state law, whereas here they agree to be subject to state laws if Wyoming can show that those laws are necessary for conservation purposes.
- Court says that although equal footing doctrine relied upon in Race Horse does not preclude the continuation of *perpetual* rights, it does not include the rights of the 1868 Crow Treaty, which were "temporary and precarious."

- Court states that “the Tribe’s right to hunt reserved in the Treaty with the Crows, 1868, was repealed by the act admitting Wyoming into the Union….Therefore, the Tribe and its members are subject to Wyoming’s game laws and regulations regardless of whether the regulations are reasonable and necessary for conservation.”
- Court also says that “the creation of the Big Horn National Forest resulted in the “occupation” of the land” because they were no longer available for settlement.
- Court says that “we view Race Horse as compelling, well-reasoned, and persuasive. . . .Race Horse is alive and well.” This is in direct contradiction to all of the other cases involving this treaty, especially the Idaho Supreme Court ones, which view Race Horse as no longer applicable.

76 U. Det. Mercy L. Rev. 821 In “*Treaty Interpretation in the 20th Century: What Does "During the Pleasure of the President" Mean?*” Michelle L. Alamo & Joseph A. Lucas discuss this case in relation to *Race Horse*: “Mille Lacs is significant to future Indian treaty disputes because it expressly limits the "temporary and precarious"/"perpetual and continuing" distinction announced by the Supreme Court in Ward v. Racehorse. The Supreme Court's holding is directly contrary to the Tenth Circuit's holding in Crow Tribe v. Repsis, which distinguished between state regulation of perpetual rights, which allowed rights to continue under the Equal Footing Doctrine subject only to reasonable and necessary conservation regulations, and temporary rights, which were automatically extinguished under the Equal Footing Doctrine and, therefore, subject to outright regulation by the state. Under the standard announced by the Supreme Court in Mille Lacs, the distinction between temporary and perpetual rights was abolished, all rights are reconcilable with the state's sovereign power to regulate hunting and fishing activities and, therefore, all rights will presumptively survive an Equal Footing Doctrine challenge. Unless Congress announced a clear intent to extinguish the rights upon statehood, the rights will not be automatically abrogated. This is a significant victory for Indian tribes.”

Confederated Tribes of Chehalis Indian Reservation and Shoalwater Bay Indian Tribe v. State of Washington; William R. Wilkerson; Frank R. Lockard; Washington State Game Commission, and United States v. Washington, 96 F.3d 334 (9th Cir. 1996)
Certiorari Denied April 14, 1997

The two tribes have no treaty rights, but argue that they have implied fishing rights arising from the executive orders creating their reservations, and that they are entitled to the treaty fishing rights of the Quinault (under Treaty of Olympia). Also argue that they have rights based on aboriginal title.

Court concludes that tribes have not merged with Quinault “in a manner sufficient to combine their tribal or political structures” and do not have the off-reservation rights. (Quinault are allied against the tribes in this appeal). “In United States v. Suquamish Indian Tribe, 901 F.2d 772, 776 (9th Cir. 1990), we held that a treaty signatory tribe may obtain the treaty fishing rights of another treaty signatory tribe only if the tribes merge or consolidate in a manner sufficient to combine their tribal or political structures. The Tribes concede that they never signed the Treaty of Olympia or any other treaty. They also concede that they have never merged or consolidated with any of the tribes that signed the Treaty.”

RE: Aboriginal Rights at issue
“Aboriginal title refers to the right of the original inhabitants of the United States to use and occupy their aboriginal territory. Tee-Hit-Ton Indians v. United States, 15 Alaska 418, 348 U.S. 272, 279, 99 L. Ed. 314, 75 S. Ct. 313 (1955). It exists at the pleasure of the United States, and may be extinguished "by

treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise. . . ." United States v. Santa Fe Pacific R.R. Co., 314 U.S. 339, 347, 86 L. Ed. 260, 62 S. Ct. 248 (1941). Extinguishment terminates corresponding use and occupancy rights, including fishing rights, except where such rights are expressly or impliedly reserved [**17] in a treaty, statute or executive order. See Western Shoshone Nat'l Council v. Molini, 951 F.2d 200, 202-03 (9th Cir. 1991) (tribe's aboriginal hunting and fishing rights taken when full title extinguishment occurred absent express reservation of those rights), cert. denied, 506 U.S. 822, 121 L. Ed. 2d 39, 113 S. Ct. 74 (1992); see also Wahkiakum, 655 F.2d at 180 n.12 ("An aboriginal right to fish has been recognized only in the context of interpretation of a ratified treaty or federal statute, where courts have held that aboriginal fishing rights were impliedly reserved to the Indians.").

The district court found that an 1863 executive order opening lands in Southwest Washington for settlement by non-Indians was inconsistent with exclusive use and occupancy of any of the local tribes and therefore extinguished any remaining aboriginal title in the region. The court also found that all aboriginal fishing rights of Indians to which [*342] the Tribes claim successorship were extinguished with aboriginal title.

The Tribes do not directly confront these factual findings. Instead, they argue that a settlement provision contained in a 1963 Indian Claims Commission award "expressly reserved [Chehalis] aboriginal [**18] hunting and fishing rights." See Upper Chehalis Tribe v. United States, 12 Ind. Cl. Comm. 644, 648 (1963). This argument is without merit. The provision stated only that the settlement, which resolved that all Chehalis aboriginal tribal lands had been taken, "in no way or manner releases . . . any hunting and fishing rights of the Chehalis Indians . . . ." Id. The provision did not reserve aboriginal fishing rights, but said only that the settlement had no effect on existing fishing rights, if any. But as the district court found, there were no such rights because they had been extinguished with aboriginal title. We reject the Tribes' claim to Chehalis aboriginal fishing rights."

U.S. v. Washington, 98 F.3d 1159 (9th Cir. 1995)
(United States Of America, Plaintiff-Appellee, And Duwamish Indian Tribe; Snohomish Indian Tribe; Steilacoom Indian Tribe, Plaintiffs-Intervenors-Appellants, V. State Of Washington; Nisqually Indian Tribe; Hoh Indian Tribe; Lummi Indian Nation; Skokomish Indian Tribe; Jamestown Band Of Klallams; Lower Elwha Klallam Tribe; Port Gamble Band Clallam; Muckleshoot Indian Tribe; Quinault Indian Nation; Quileute Indian Tribe; Tulalip Tribe; Makah Indian Tribe; Suquamish Indian Tribe; Puyallup Tribe; Swinomish Indian Tribal Community; Nooksack Tribe; Upper Skagit Tribe, Defendants-Appellees.)

Summary: The 1979 Boldt decision (476 F. Supp. 1101; W.D. Washington, Tacoma Div.) ruled that the Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom Tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. Duwamish, Snohomish, and Steilacoom petitioned US District Court for relief from that judgment on the grounds that Boldt may have had Alzheimer's at the time of the ruling. District Court denied that motion in January 1995. Tribes appeal.

Decision: Court affirms District Court's denial of motion. Tribes do not have treaty rights.

Sohappy v. Hodel, 911 F.2d 1312 (9th Cir. 1990)
(David Sohappy, Sr., Myra Sohappy, David Sohappy, Jr., Henry Alexander, David Winnier, Michael Brisbois, Michael Hunt, Johnny Kuneki Queampts, Johnny Jackson and The Chiefs and Council of the

Columbia River Indians, Plaintiffs-Appellants, v. Donald P. Hodel, Secretary of Interior; Ross Swimmer, Assistant Secretary for Indian Affairs; Stanley Speaks, Area Director for Bureau of Indian Affairs; Casper Weinberger, Secretary of Defense; John Marsh, Jr., Secretary of the Army; Lt. Gen. Joseph Bratton, Chief of the Corps of Engineers; Col. Gary Lord, District Engineer for Oregon, all in their official capacities, and their successors in interest, and the United States of America, Defendants-Appellees)

Summary: Tribes have the right to maintain permanent structures in the "in lieu" sites provided by Congress (1945, 1988 Acts) to replace sites lost (flooded) by the construction of the Bonneville Dam on the Columbia river. (Treaties of 1855 reserve the right to erect "suitable houses" or "suitable buildings" to cure the fish.)

United States of America, Plaintiff-Appellee, and Tulalip Tribes of Washington; Lummi Indian Tribe; Muckleshoot Indian Tribe, and Upper Skagit Tribe, Plaintiffs-Appellees, v. Suquamish Indian Tribe, Plaintiff-Appellant, v. State of Washington, et al., Defendants, 901 F.2d 772 (9th Cir. 1990)

Issue: Suquamish Tribes seeks adjudication that it is the successor to the former Duwamish Tribe and thus can exercise the treaty fishing rights of the Duwamish. (Under Treaty of Point Elliot). (The Suquamish already have treaty rights in several areas on west side of Puget Sound; they want to exercise rights on the eastern side as successors in interest to Duwamish.)

Findings/Summary:

- Suquamish not entitled to exercise fishing rights on east side of Puget Sound. They are not successors in interest to the Duwamish.

United States v. Lummi Indian Tribe, 841 F.2d 317 (9th Cir. 1988)
(United States of America, Plaintiff-Appellee, Tulalip Tribe, Plaintiff-Intervenor-Appellee, v. Lummi Indian Tribe, Plaintiff-Intervenor-Appellant)

Issue: Delineation of fishing grounds
Opinion: "The Lummi Indian Tribe appeals from a judgment holding that in 1855 certain waters in the northern part of Puget Sound were usual and accustomed fishing grounds of the Tulalip Tribes. We affirm."

Northern Arapahoe Tribe v. Hodel, 808 F. 2d 741 (10th Cir. 1987)

(THE NORTHERN ARAPAHOE TRIBE, in its own right and on behalf of all members of the Northern Arapahoe Tribe, Plaintiff-Appellant, v. DONALD P. HODEL, Secretary of the Interior, KENNETH L. SMITH, Assistant Secretary, Indian Affairs, RICHARD C. WHITESELL, Bureau of Indian Affairs, Billings Area Office Director, L. W. COLLIER, Wind River Agency Superintendent, Defendants-Appellees, and THE SHOSHONE TRIBE OF THE WIND RIVER INDIAN RESERVATION, WYOMING, Intervening Defendant-Appellee)

Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868

Decision: The Shoshone were guaranteed a reservation in 1868 to "be held as Indian lands are held." The court affirms that this implies the right to hunt and fish on reservation.

The treaty also guaranteed the reservation for the Shoshone's "absolute and undisturbed use and occupation." U.S. broke treaty by bringing a band of Northern Arapahoe onto the reservation under military escort ten years later. Even though the Arapahoe weren't part of the original treaty establishing the reservation, and their placement there was in effect a treaty violation, the end result is that the Arapahoe also possess the same rights to hunt and fish as the Shoshone.

United States v. Skokomish Indian Tribe, 764 F.2d 670 (9th Cir. 1985)

(United States of America, Plaintiff, and Quinault Indian Tribe, et al., Plaintiffs-Intervenors, and the Suquamish Indian Tribe, Plaintiff-Intervenor-Appellant, v. The Skokomish Indian Tribe, Plaintiff-Intervenor-Appellee, v. State of Washington, Et al., Defendants)

The district court found that the Twana Tribe (the aboriginal predecessor in interest of the Skokomish) had a primary right to fish the Hood Canal and its watershed area. A primary right is the power to regulate or prohibit fishing by members of other treaty tribes. The Suquamish Tribe seeks reversal of the district court's judgment to avoid such regulation where the adjudicated "usual and accustomed fishing places" of the Suquamish in the Hood Canal area overlap with those of the Skokomish. Appeals Court affirms decision of the district court. "The district court's holding that the Twana/Skokomish held the primary fishing right in the Hood Canal and its drainage area was based on reliable evidence….It, therefore, is not clearly erroneous and, accordingly, is affirmed."

United States v. Washington, 730 F.2d 1314 (9th Cir. 1984)

(United States of America, Plaintiff-Appellee, Makah Indian Tribe, Plaintiff-Intervenor/Appellant, v. State of Washington, et al., Defendants)

Treaty: Makah sought a determination of its usual and accustomed fishing places under 1855 treaty; argued that district court decision was invalid.

Issue: Court affirms district courts decision (which set western boundary of Makah fishing area at longitude 125 deg. 42' W).

Swim v. Bergland, 696 F.2d 712 (9th Cir. 1983)

(Sherman SWIM, Michaud Creek Ranches, Inc., an Idaho corporation, Roland G. Allen, Arimo Corporation, an Idaho corporation, Norman Davis, William T. Evans, Calvin A. Munn, Donald E. Pickett, Demar H. Gilbert, F. Barlow Gilbert, James M. Maybey, Don C. Rigby Family Partnership, Carol E. Wilmore, Russell A. Hebdon, Sara Hebdon, King Creek Grazing Association, Jay Shiply and John C. White, Plaintiffs, Appellants, Cross-Appellees, v. Robert BERGLAND, Secretary of Agriculture, John R. McGuire, Chief Forester, Vern Hamre, Regional Forester, and Charles J. Hendricks, Forest Supervisor, Caribou National Forest, Defendants, Appellees, Cross-Appellants, and Shoshone-Bannock Tribes, Intervenors, Appellees, Cross-Appellants)

Issue: Rights of Shoshone-Bannock to graze cattle on federal lands within Caribou National Forest in Idaho, as per treaty of July 3, 1868 and agreement of February 5, 1898.

Decision: Court affirms District Court decision that recognized grazing rights, but reversed the District Court's decision that the tribe had right to a "fair proportion" of grazing capacity. They instead held that the tribe had *priority* grazing rights over non-Indians.

Notes:

- 1868 treaty created the Fort Hall Reservation for "absolute and undisturbed use and occupation," which included right to graze cattle on reservation lands.
- 1898 Agreement ceded part of the reservation, reserved grazing, hunting, etc, rights as long as ceded land part of public domain.
- Ceded land became Caribou National Forest.
- District court found that tribe had communal rights to a "fair proportion" of the grazing capacity on the ceded areas of Caribou National Forest.
- State issues permits to both Indian and non-Indians to graze on the land.
- Court finds that 1898 Agreement did not reserve a "fair proportion," because there is no "in common with" kind of language. Instead, the tribes reserved *priority* grazing rights in the area, not just an equal share.

Lac Courte Oreilles v. Voight, 700 F.2d 341 (7th Cir. 1983)

"LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, et al., Plaintiffs-Appellants, Cross-Appellees, v. Lester P. VOIGT, et al., Defendants-Appellees, Cross-Appellants; UNITED STATES of America, Plaintiff-Cross-Appellee, v. STATE OF WISCONSIN, a sovereign state, and Sawyer County, Wisconsin, Defendants-Cross-Appellants"

Issue: Whether LCO band has retained treaty-reserved off-reservation usufructuary rights, whether rights are free of State regulation. Rights were reserved in 1837 (7 Stat. 536) and 1842 (7 Stat. 591) treaties.

Decision: Rights upheld.

Notes:

- 1854 Treaty did not really have language suggesting cession of rights, but state argued that because the tribes agreed to reside on reservations, it did. The cession is "The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary-line, to wit…."
- Discussing treaty-based vs. aboriginal rights: "Both aboriginal and treaty-recognized title carry with them a right to *use* the land for the Indians' traditional subsistence activities of hunting, fishing, and gathering. **Treaty-recognized rights of use, or usufructuary rights, do not necessarily require that the tribe have title to the land."**
- "Because the Treaty of 1854 made no reference whatsoever to the usufructuary rights of the Chippewas who had previously ceded their territory to the United States, our analysis focuses on whether the circumstances surrounding the treaty compel the conclusion that termination of such rights was intended."
- The treaty does not explicitly reserve rights on the territory ceded in previous treaties, but court says "The treaties of 1837,. 1842, and 1854 are consistent in that each treaty includes both a cession of land and a reservation of usufructuary rights on the ceded land by those

Indians relinquishing their territory. The LCO band had ceded its territory pursuant to the two earlier treaties in which its reservations of usufructuary rights were explicit. Omission of any reference to those rights in the 1854 treaty suggests that the LCO band believed their right to use ceded land for traditional pursuits to be secure and unaffected by the 1854 treaty."

- "At most, the structure of the treaty and the circumstances surrounding its enactment *imply* that such an abrogation was intended. Treaty-recognized rights cannot, however, be abrogated by implication. The LCO's rights to use the ceded lands remain in force."

Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981)

Issue: Wahkiakum Band seeks fishing rights in Columbia River under Treaty of Olympia (12 Stat. 971) (argument is that they were affiliated with the Quinault under the treaty) and based upon aboriginal rights.

Finding: Court affirms lower court's decision that the Wahkiakum Band does not possess rights under the treaty to fish on the Columbia River—it is not a "usual and accustomed ground" of the Quinault.

Based upon an examination of the legislative history surrounding the Act of August 24, 1912, Court concludes that the Act was intended to extinguish all rights of the band, including aboriginal rights of fishing.

United States v. Lower Elwha Tribe, 642 F.2d 1141 (9th Cir. 1981)
(United States of America et al., Plaintiffs, and Makah Indian Tribe, Plaintiff-Intervenor/Appellant, v. Lower Elwha Tribe, Plaintiff-Intervenor/Appellee, v. State of Washington, et al., Defendants)

Treaties: Treaty with the S'klallam, 1855 (Treaty of Point No Point); Treaty with the Makah, 1855 (Treaty of Neah Bay)

Issue: The Makah and Lower Elwha Tribes both claimed rights to fish in certain areas initially found to be Makah fishing grounds. The Lower Elwha Tribe contended that it, rather than the Makah Tribe, had primary Indian fishing rights in its aboriginal territory east of the Hoko River. The Lower Elwha also sought joint fishing rights on the Hoko, which at treaty times separated the two tribes.

The district court found that the disputed areas were usual and accustomed fishing grounds of both tribes, but that the treaty-time Elwha Tribe had the right to preclude Makah fishing east of the Hoko and that the present-day Lower Elwha could exercise the same right. The court also found that the treaty-time Makah controlled fishing west of the Hoko and that the Hoko was subject to joint use and control. Fishing rights in these places were allocated accordingly.

Decision: Lower Elwha Tribe is entitled to exercise the primary Indian fishing right on the disputed rivers east of the Hoko and that Makah fishing in that area is subject to Elwha permission. The Hoko River remains a joint fishery.

United States et al. v. State of Washington et al., 641 F.2d 1368 (9th Cir. 1981)
(UNITED STATES of America et al., Plaintiffs, and Samish, Snohomish, Snoqualmie and Steilacoom Indian Tribes, Plaintiffs-Intervenors/Appellants, and Duwamish Indian Tribe, Plaintiff-Intervenor/Appellant, v. STATE OF WASHINGTON et al., Defendants)

Summary: The 1979 Boldt decision (476 F. Supp. 1101; W.D. Washington, Tacoma Div.) ruled that the Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom Tribes do not have fishing rights under Treaties of Point Elliott and Medicine Creek. The tribes are appealing the decision, saying that Boldt applied an incorrect legal standard. Appeals Court determines that Boldt's decision erroneously relied on federal recognition, but that other standards of evidence lead to the same conclusion—treaty rights are denied because tribes have not functioned as distinct communities since treaty times.

Holcomb v. Confederated Tribes of the Umatilla Indian Reservation, 382 F.2d 1013 (9th Cir. 1967)

Issue: Whether tribes have right to hunt for subsistence purposes free of state game laws on national forest lands (Umatilla and Whitman National Forests). (An appeal from lower court decision affirming tribal right.) Treaty of June 9, 1855 allows hunting on "unclaimed lands" (12 Stat. 945)

Appeal of *Confederated Tribes of the Umatilla Indian Reservation v. Maison*, 262 F. Supp. 871 (D.Or.1966), which held that ceded national forest lands are within the scope of expressly reserved Indian off-reservation use rights.

Decision: Tribes understood their rights to be on land not occupied by white settlers. Right to hunt on National Forest land affirmed.

Makah Indian Tribe et al. v. Schoettler, Director of the Department of Fisheries, 192 F.2d 224. (9th Cir. 1951).

Treaty: Treaty with the Makah, 1855 (Treaty of Neah Bay), 1/31/1855, 12 Stat., 939 (Kappler 2:682-685)

Issue: State regulation of tribal salmon fishing

Decision: Regulations preventing Makah from taking of fish in the Hoko have not been proven to be necessary for the conservation of fish in the fall run of salmon in that river.

Nez Perce Tribe v. Idaho Power Company, 847 F. Supp. 791 (D. Idaho 1993)

Treaty: Nez Perce, 12 Stat. 957 (1855)

Summary: Denies tribe monetary damages for loss of fish due to power company work, but does treat the rights under this treaty as continuing.

United States v. Oregon and Confederated Tribes of Colville Reservation. 787 F. Supp. 1557, (D. Oregon, 1992)

Issue: Whether tribes can establish treaty rights under 1855 Treaty with the Yakima (12 Stat. 951) and 1855 Treaty with Nez Perce (12 Stat. 957).

Finding: "Colville Confederated Tribes has failed to establish that it is the successor Indian government and the present day holder of treaty rights reserved to the Wenatchi, Entiat, Chelan, Columbia, Palus, or Chief Joseph Band of Nez Perce in the treaties of 1855 with the Yakima Nation or with the Nez Perce."

United States v. Michigan, 471 F. Supp. 192; ("Fox Decision")(W.D. Mich., N. Div., 1979)

Issue: Whether tribes possess rights to fish in ceded areas of the Great Lakes in boundaries of Michigan based on 1836 Treaty (7 Stat. 491) (Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians).

Decision: Judge Fox ruled rights were retained, not abrogated by later treaties or acts of Congress. The Fishing Rights Reserved by the Treaty of 1836 were not relinquished by the Treaty of 1855 (11 Stat. 621).

United States v. State of Washington, 476 F. Supp. 1101 (W. D. Wash., Tacoma Div., 1979)
Motion for Reconsideration Denied April 24, 1979
Appeal: see *U.S. v. Washington*, 98 F.3d 1159 (9th Cir. 1995)

Decree: ". . . it is hereby adjudged and decreed that the Intervenor entities, Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom Tribes, do not have and may not confer upon their members fishing rights under the Treaties of Point Elliott and Medicine Creek."

Under (12): "None of the five Intervenor entities whose status is considered in these Findings is at this time a political continuation of or political successor in interest to any of the tribes or bands of Indians with whom the United States treated in the treaties of Medicine Creek and Point Elliot."

United States v. Washington (Boldt decision) 384 F. Supp. 312 (W.D. Wash. 1974)
aff'd 520 F.2d 676 (9th Cir. 1975), *cert. Denied* 423 U.S. 1086, 47 L.Ed. 2d97, 96 S.Ct. 877 (1976).

(UNITED STATES of America, Plaintiff, Quinault Tribe of Indians on its own behalf and on behalf of the Queets Band of Indians, et al., Intervenor-Plaintiffs, v. STATE OF WASHINGTON, Defendant, Thor C. Tollefson, Director, Washington State Department of Fisheries, et al., Intervenor-Defendants)

Summary:

- Judge Boldt determined that the Supreme Court's fair apportionment standard required a 50/50 split of harvestable fish between Indian and non-Indian fisherman.
- Ruled that 14 tribes have treaty fishing rights entitling them to take up to 50% of the harvestable fish passing through their off-reservation fishing grounds.
  Tribes are:
  1) Hoh (Treaty with the Quinaeilt, et al., July 1, 1855)
  2) Lummi (Treaty of Point Elliott, January 22, 1855)
  3) Makah (Treaty with the Makah, January 31, 1855)
  4) Muckleshoot (Treaty of Point Elliott, January 22, 1855 and Treaty of Medicine Creek, Dec. 26, 1854)(successors of interest to Skopamish, Stkamish, Smulkamish for whom Chief Seattle signed as Chief of the Duwamish)
  5) Nisqually (Treaty of Medicine Creek)

6) Puyallup (Treaty of Medicine Creek)
7) Quileute (Treaty with the Quinaeilt, et al., July 1, 1855)
8) Quinault (Treaty with the Quinaeilt, et al., July 1, 1855)
9) Sauk-Suiattle (Treaty of Point Elliiot)
10) Skokomish (Treaty of Point No Point, Jan. 26, 1855)
11) Squaxin Island Tribe (Treaty of Medicine Creek)
12) Stillaguamish Tribe (Treaty of Point Elliot) (descendants of "Stoluck-wha-mish" of the treaty)
13) Upper Skagit Tribe (Treaty of Point Elliot) (descendants of signatories, not identified except as "ten separate villages" who were signatories to treaties)
14) Yakima Nation (Treaty with the Yakimas, June 9, 1855)

Under "Conclusions of Law"

- "7. This case is limited to the claimed treaty-secured off-reservation fishing rights of the Plaintiff tribes as they apply to areas of the Western District of Washington [**241] within the watersheds of Puget Sound and the Olympic Peninsula north of Grays Harbor, and in the adjacent offshore waters which are within the jurisdiction of the State of Washington. The subject matter of this case is limited to the application of those rights to the anadromous fish which are in the waters described, including such fish as are native to other areas. [FPTO § 5]"
- "16. Each of the Plaintiff tribes holds a right under one or more of the treaties…to fish at usual and accustomed places outside of reservation boundaries."
- "19. The treaty clauses regarding off-reservation fishing at usual and accustomed grounds and stations in common with other citizens secured to the Indians' rights, privileges and immunities distinct from those of other citizens."
- "23. The State's police power to regulate the off-reservation fishing activities of members of the treaty tribes exists only to the extent necessary to protect the fishery resource."
- "25. The exercise of a treaty tribe's right to take anadromous fish is limited only by the geographical extent of the usual and accustomed fishing places, the limits of the harvestable stock, the tribe's fair need for fish, and the opportunity for non-Indians to fish in common with Indians outside reservation boundaries."
- "the court finds and holds that every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a usual and accustomed ground or station at which the treaty tribe reserved, and its members presently have, the right to take fish." (#8 under "Established Basic Facts and Law")

**50% share does not include on-reservation take, or fish caught for ceremonial or subsistence purposes. *Fishing Vessel* later rules that it does, and that 50% is the maximum take. (443 U.S. 658; 1979).

NOTE on "Usual and Accustomed Grounds and Stations"
The Boldt Decision established "basic facts and law," including an explanation of the treaty reference to "all usual and accustomed grounds and stations." 384 F. Supp. at 330-32. "Stations" indicates fixed locations, while "grounds" refers to "larger areas which may contain numerous stations and other unspecified locations which . . . could not then have been determined with specific precision and cannot now [**7] be so determined." Id. at 332. "Usual and accustomed" excludes locations used infrequently. *Id.* Judge Boldt held that "every fishing location where members of a tribe customarily fished from time

to time at and before treaty times, however distant from the then usual habitat of the tribe . . . is a usual and accustomed ground or station. . . ." Id.

The Boldt Decision defined "usual and accustomed" fishing grounds and stations as "every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters." (at 332)

and:
United States v. State of Washington et al., US District Court, W.D. Washington, 459 F. Supp. 1020. Compilation of Major Post-Trial Substantive Orders (Through June 30, 1978)

Additional tribes found to have treaty rights:
1) Swinomish (Treaty of Point Elliott, 12 Stat. 927, successor to certain tribes and bands party to treaty)
2) Tulalip (Treaty of Point Elliot, successor to certain, tribes, bands or groups party to treaty)
3) Port Gamble Band of Clallam (Point No Point, 12 Stat. 933, successor to certain tribes, bands, or groups party to treaty)
4) Lower Elwha Band of Clallam (Treaty of Point No Point, successor to certain tribes, bands, or groups party to treaty)
5) Suquamish (Treaty of Point Elliot)
6) Nooksack Indians (Treaty of Point Elliot—court finds they are part of "Lummi and other tribes" mentioned in treaty).

The tribes above all hold rights under treaties to fish at usual and accustomed places outside of reservation boundaries.

United States v. Hicks, 587 F. Supp. 1162 (W.D. Wash. 1984)

Treaty: Treaty with the Quinaiet, Etc., 1855 (Treaty of Olympia)
Issue: Whether tribe can exercise hunting rights guaranteed under treaty as long as lands were "open and unclaimed," in Olympic National Park.

Decision: Legislation creating Olympic National Park caused the land to cease to be "open and unclaimed." 1942 legislation forbidding hunting in Olympic National Park terminates hunting rights on park lands. Court states that the legislative history of park establishment, which emphasizes the need to protect the Roosevelt elk herds in the area, clearly shows that the land was put aside for uses incompatible with hunting.

Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969)

(Richard SOHAPPY et al., Plaintiffs, v. McKee A. SMITH, Edward G. Huffschmidt, J. I. Eoff, Commissioners, Oregon Fish Commission; Robert W. Schoning, Director, Oregon Fish Commission, their agents, servants, employees and those persons in active concert or participation with them; John W. McKean, Director, Oregon Game Commission, his agents, servants, employees and those persons in active concert or participation with him, Defendants. UNITED STATES of America, Plaintiff, v. STATE OF OREGON, Defendant, and The Confederated Tribes of the Warm Springs Reservation of Oregon;

Confederated Tribes & Bands of the Yakima Indian Nation; Confederated Tribes of the Umatilla Indian Reservation; and Nez Perce Tribe of Idaho, Intervenors)

Treaties: Yakima, June 9, 1855 (12 Stat. 951); Tribes of Middle Oregon, June 25, 1855 (12 Stat. 963); Treaty of June 9, 1855 with Umatilla (12 Stat. 945); Treaty of June 11, 1855 with Nez Perce (12 Stat. 957).
Tribes: Yakima, Umatilla, Walla Walla, Cayuse, Nez Perce, Warm Springs Tribe

Summary:

- Issue is limitation on state's power to regulate exercise of treaty rights.
- Court held that state regulation of Indian fishing must "not discriminate against the Indians" – in order to meet non-discrimination requirement of *Puyallup I*, state restrictions must allow the treaty Indians to catch "a fair share" of harvestable fish.
- State regulation of off-reservation rights must fulfill three requirements: 1) be necessary for conservation; 2) not discriminate against Indians; and 3) meet "appropriate standards"

State v. Cutler, 109 Idaho 448 (1985)

Treaty: Treaty with the Eastern Band Shoshoni and Bannock, 1868
Issue: Whether Shoshone-Bannock Indians can hunt in state-owned wildlife management area.
Facts: The wildlife area, Sand Creek Ranch, was for a time owned by private individuals. The land was eventually consolidated under the ownership of one individual, who later sold it to the state. There is some confusion because the Ranch seems to be among federally owned property as well. But the court says that the killing took place on state-owned land.

Notes:

- Court notes that Indians' travels to far-flung military outposts meant that they understood that "a governmental unit could 'occupy' lands within the meaning of the treaty" without a settlement being evident. However, in a long dissent, it is noted that "both parties to the 1868 Fort Bridger Treaty understood 'unoccupied' to mean those areas where hunting would not interfere with white settlers," and that "to circumstantially infer that the Indians in 1868 understood Anglo-Saxon concepts of land occupancy solely on the basis of some visits by tribal leaders to white settlements" is "unreasonable," and that "such a conclusion, without more corroborative evidence, is grossly ethnocentric."
- Court notes that "lands of the United States" could refer to both state and federally owned lands, since the tribes at the time of the treaty did not distinguish between state and federal government's when dealing with "the white man's government." They don't follow up on this notion, because they deal with whether the land was "occupied," and because it was for a time under private ownership, they hold that it was, and treaty rights were not applicable there.
- Court said hunting rights don't extend to state-owned property; their determination is based not upon federal/state ownership distinctions, but on whether land is "occupied." They conclude that the violations did not occur on "unoccupied lands" as meant by the treaty.

State of Montana v. Lasso Stasso, 172 Mont. 242 (1977)

Treaty: Treaty with the Flatheads, Etc., 1855

Issue: Defendant Stasso kills deer in National Forest Service lands, claims treaty right under July 16, 1855 Treat (12 Stat., 975). Treaty specifies hunting on "open and unclaimed" lands.

Decision: Court finds that National Forest lands involved are open and unclaimed lands. Affirms treaty right to hunt. Court cites *Tinno* and *Arthur* as "persuasive in the instant case."

State v. Coffee, 97 Idaho 905 (1976)

Treaty: Treaty with the Flatheads, Etc., 1855

Issue: Defendant argues 1855 treaty (12 Stat. 975) gives the right to hunt free of state regulation.

- Lots of confusion as to whether Idaho Kootenai actually signed treaty, but decision is that the treaty ceded their land, so they possess the hunting rights under the treaty.
- *But*, defendant was hunting on *private property* so issue of "open and unclaimed" land is not addressed: "Had defendant been hunting on open and unclaimed land, a motion to dismiss might have been justified, depending on whether the State could show a need to regulate the hunting. See, *State v. Tinno*, supra. However, as she was hunting on private land, she was subject to state game laws."

State v. Tinno, 94 Idaho 759 (1972)

Issue: Right of Shoshone-Bannock Indian to fish free of state regulation by virtue of the July 3, 1868 Fort Bridger Treaty provision for hunting in unoccupied lands of the United States.

- *Decision:* Court interprets the "unoccupied lands" phrasing to include fishing as well as hunting, based on testimony that there were not separate words for fish/hunt in the tribal language, and the fact that tribe historically relied on both for subsistence. Rights of 1868 treaty affirmed.

Notes:

- State argues that "unoccupied" means *ceded* land only. Court decides the issue is moot, since the area where Tinno was fishing was on the ceded land. But second opinion emphasizes that this does not mean the Court accepts the argument of the state. Justice McQuade notes that *Race Horse* placed a limit on "unoccupied lands" to mean "any federally controlled areas over which Congress had not yet granted state jurisdiction by passing an admission act superseding prior treaties. Subsequent demise of the superseding act theory has removed the only limit the Supreme Court perceived in geographical application of the Fort Bridger Treaty."
- Court says that the "Fort Bridger Treaty here at issue contains a unified hunting and fishing right which is unequivocal. They contrast it to "qualified" fishing rights like those with the "in common with citizens" provisions, and note that those rights receive special protection, so "unqualified/unequivocal" rights "certainly cannot be regulated by the state unless it clearly proves regulation of the treaty Indians' fishing in question to be necessary for preservation of the fishery."

People v. Jondreau, 384 Mich. 539 (1971)

Treaty: Treaty with the Chippewa, 1854

Issue: Whether the treaty gives the defendant (Jondreau, a full-blooded Chippewa Indian, living on the L'Anse Indian Reservation), the right to fish on Keweenaw Bay on Lake Superior without regard to state fishing regulations.

Decision: Court holds that state game regulations are invalid as applied to Indians who are protected by the Chippewa Treaty of 1854.

Note on phrasing "During the Pleasure of the President":
Court states that "The people point out the fact that unlimited fishing rights could deplete our limited national resources. They rely on Puyallup, supra, where the court held that the state could provide regulations that were reasonably necessary for the conservation of fish. In an age of growing awareness of the need to preserve and protect our environment, this is an important consideration. However, unlike the treaty of 1855 considered in the Arthur case, the Chippewa Indian Treaty of 1854 does provide a safeguard. Under Article 11, the President may issue an order limiting or extinguishing the hunting and fishing rights of the Indians. The four fish involved in this case will not upset the ecological balance. However, if in the future the number of fish being taken does constitute such a threat, we are convinced that the President would take appropriate action" (at 21).

State v. Arthur, 74 Idaho 251 (1953)

Issue: Arthur claims right to hunt on National Forest lands by virtue of Treaty of 1855 (12 Stat. 957), which guaranteed hunting on "open and unclaimed lands."

Decision:

- Court finds that no subsequent agreement, treaty, or Act of Congress abrogated the treaty rights, nor did the admission of Idaho into the Union.
- Court finds that "open and unclaimed" land was meant, in the context of treaty negotiations, to incorporate lands not settled or occupied by whites "and was not intended to nor did it exclude lands title to which rested in the federal government, hence the National Forest Reserve upon which the game in question was killed was "open and unclaimed land."
- "We hold that the rights reserved by the Nez Perce Indians in 1855, which have never passed from them, to hunt upon open and unclaimed land still exist unimpaired and that they are entitled to hunt at any time of the year in any of the lands ceded to the federal government though such lands are outside the boundary of their reservation."

Note: The court does not really address the scope of "open and unclaimed," since the land the National Forest is on is actually on land ceded by the tribe.

APPENDIX F
ACRONYMS AND ABBREVIATIONS

AAP ..... Army Ammunition Plant
ACT ..... Activity
AFB ..... Air Force Base
AFS ..... Air Force Station
AGB ..... Air National Guard Base
AGS ..... Air Guard Station
AMC ..... Army Medical Center
ARB ..... Air Reserve Base
ARS ..... Air Reserve Station
AS ..... Air Station
BIA ..... Bureau of Indian Affairs
CHEM ..... Chemical
CTR ..... Center
DEF ..... Defense
DMA ..... Defense Mapping Agency
FAC ..... Facility
GR ..... Grounds
IAP ..... International Airport
ICC ..... Indian Claims Commission
ICP ..... Inventory Control Point
IS ..... Island
MAP ..... Municipal Airport
MC ..... Marine Corps
MT ..... Mountain
NAS ..... Naval Air Station
NAV ..... Naval
Naveseawarfare ..... Naval Sea Warfare
NS ..... Naval Station
OLF ..... Outlying Field
PAC ..... Pacific
SPT ..... Support
SY ..... Shipyard

APPENDIX G
GLOSSARY

Aboriginal Rights: Rights predicated upon aboriginal use and title. Both aboriginal and treaty-based rights are covered by the Supreme Court's Reserved Rights Doctrine, which states that tribes retain any rights to the lands not expressly ceded by treaty. The primary distinction between the two is that Treaty-reserved rights are not based upon aboriginal title; aboriginal rights are, and may or may not involve reliance upon treaties to establish that use and title.

Aboriginal Title (also known as Indian title or Indian right of occupancy): "Broadly defined, this refers to ownership of the lands inhabited by a tribe based on immemorial rights arising long before contact with Euro-Americans. Under federal Indian law, there is contrary precedent on the actual status of aboriginally held Indian lands, with some decisions referring to Indian title as a "mere" right of occupancy and other cases describing it as a "sacred" right of occupancy. (Wilkins 1997:365).

Under federal policy, Indian nations were deemed to have an aboriginal right to use the lands until that right was extinguished through conquest or purchased by the federal government. This is a usufructuary right to access the living resources upon the land. Whether this concept was understood at the time of treaty negotiations is unclear, but the results are twofold: (1) All lands ceded by tribes came under full ownership of the federal government. The federal government extinguished aboriginal title to about 2.5 million square miles of land; and (2) All lands reserved by tribes have bifurcated title, the federal government has the legal title to the land; the tribes have merely the beneficial title to the land. This created a trust status with the federal government owning the land for the benefit of the tribe. Even today, most reservation land is held in trust by the federal government for a designated Indian tribe, tribes, or Indian individuals.

Abrogation: "The action of terminating a treaty or international agreement" (O'Brien 1989:313).

Agreement, Statutory: Even though Congress prohibited treaty negotiations after 1871 (Act of Mar. 3, 1871, 16 Stat. 544, 566, now codified as 25 U.S.C. § 71), tribes continued to relinquish land using a written instrument called an "agreement." Such agreements were not binding on the federal government unless ratified by both houses of Congress. These agreements have as much legal authority and weight as treaties. The rights and liabilities exchanged and retained by agreement are nearly identical to treaties.

Allotments: Allotments are parcels of land, typically 160 acres, that are held in trust by the federal government for individual tribal members. Trust allotments are not subject to state jurisdiction or to federal taxation. Many allotments are located within reservation boundaries but some tribes, primarily in Oklahoma, lost their land bases as a result of the allotment process. Some treaties include provisions to allot lands to tribal members but most allotments were created under the General Allotment Act of 1887 and under tribal specific allotment acts. Some reservations were subject to the allotment process, but some did not participate—thereby keeping the lands under tribal trust land status.

Initially allotments held by individual Indians continued the trust status for a limited time. The law authorized the trust status to expire, then alienation of the land was possible and state taxation applied. The expired allotments quickly fell into non-Indian ownership. Many of the original allotments became fee simple land holdings by non-Indians. The immediate result was a checkerboard of Indian/non-Indian land ownership on the reservation. The trust status of allotment lands was extended in perpetuity in 1934 in order to halt the loss of Indian lands.

Allotment Policy (also known as General Allotment or the Dawes Act): "Federal Indian policy initiated in 1887 (ended in 1934 with the enactment of the Indian Reorganization Act) designed to break up tribal governments, abolish Indian reservations by the allotment of communally held reservation lands to individual Indians for private ownership, and force Indians to assimilate into Euro-American cultural society" (Wilkins 1997:365).

Lands not allotted were considered surplus lands, and some were given as payment to Civil War soldiers. Other surplus lands were open to non-Indian homesteaders or available for the railroad companies. The allotment process transferred about 90 million acres of tribal land out of trust status to private (non-Indian) ownership between the 1880s and 1934. Since then, only about eight percent has been reacquired in trust status, and some other trust lands have been lost.

Assimilation: "The biological, cultural, social, and psychological fusion of distinct groups to create a new, ethnically homogenized society" (Wilkins 1997:366).

Bureau of Indian Affairs (BIA): "A federal agency established in 1824 and moved to the Department of the Interior in 1849. Originally, BIA personnel served as a diplomatic corps responsible for overseeing trade and other relations with Indian tribes. By the 1860s, however, it had evolved into the lead colonizing agent for the federal government and dominated virtually every aspect of tribal life within reservations. Today, the BIA is more involved in advocating programs focused on tribal educational, social, economic, and cultural self-determination" (Wilkins 1997:366).

Canons of Construction: "The system of basic rules and maxims which are recognized as governing the construction or interpretation of written instruments. In federal Indian law, for example, treaties, agreements, and laws are to be construed in a manner favorable to Indian tribes or their members. See also *Treaty"* (Wilkins 1997:366). "Indian treaties are of the same dignity as international treaties, but because of the unique political (trust) relationship which unfolded between tribes and the United States, the federal courts have created several so-called canons of construction which are designed to protect Indian rights. These serve to distinguish Indian treaties from those the United States negotiates with foreign nations: (1) A cardinal rule in the interpretation of Indian treaties is that ambiguities in treaty language are to be resolved in favor of the Indians; (2) Since the wording in treaties was designed to be understood by the Indians, who often could not read and were not skilled in the technical language often used in treaties, doubtful clauses are to be resolved in a nontechnical way as the Indians would have understood the language; and (3) Treaties are to be liberally construed to favor Indians. These three legal doctrines have been enforced inconsistently by the courts, the Congress, and the executive branch; for example, the courts have also ruled repeatedly that Congress in exercising its plenary power may unilaterally abrogate Indian treaty provisions without tribal consent" (Wilkins 1997:376).

Cession: "The ceding or yielding of rights, property, or territory from one group or person to another" (O'Brien 1989:314).

Commerce Clause: "The provision of the federal Constitution, Article I, section 8, clause 3, which gives Congress exclusive powers over interstate commerce. It states that 'The Congress shall have the power to. . .regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes.' This clause is one of the two bases (the other being the Treaty Clause) considered sufficient to empower the federal government to deal with Indian tribes" (Wilkins 1997:366-367).

Dependency Status: "Legal mask [tenet] which unilaterally reduced tribes from a status as independent nations to a position of subservient dependency in their relation to the U.S. government. See also *Guardianship/Wardship"* (Wilkins 1997:367).

Discovery, Doctrine of: "This doctrine was first fully articulated in U.S. law in the seminal Supreme Court case *Johnson v. McIntosh* in 1823. The Court held that European explorers' 'discovery' of land occupied by Indian tribes gave the discovering European nation (and the U.S. as successor) 'an exclusive right to extinguish the Indian titles of occupancy, either by purchase or conquest.' This meant that the 'discovering' nation had preempted other European powers' involvement with the tribes in a particular

geographic area. More importantly, as interpreted by western policymakers and legal scholars, this doctrine effectively excluded Indian tribes from direct participation as national entities in the process of international community development" (Wilkins 1997:368).

Domestic-Dependent Nation: "Phrase coined by Chief Justice John Marshall in the 1831 case *Cherokee Nation v. Georgia* to describe the status of tribal nations vis-à-vis their relationship to the federal government. The Court concluded that tribes lacked foreign national status because of their geographic proximity in the United States, were not states within the meaning of the U.S. Constitution, but still had a significant degree of internal autonomy as 'domestic-dependent nations'" (Wilkins 1997:368).

Executive Order Reservations: Twenty-three million acres of land were set aside for Indian reservations by Executive Order between 1855 and 1919. An Executive Order is issued by the President without need for approval by the Congress. In 1919 Congress prohibited the establishment of any additional reservations by Executive Order. In 1927 Congress eliminated the authority to change reservation boundaries by Executive Order. The property rights on Executive Order reservation lands are also considered similar to property rights of reservations created by treaty, statute, or agreement.

Federally Recognized Tribes: "Indian tribes recognized by the federal government as self-governing entities with whom the U.S. maintains a government-to-government political relationship. This relationship may be established by treaty or agreement recognition, congressional legislation, executive order action, judicial ruling, or by the Secretary of the Interior's decision. Recognized tribes are eligible for special services and benefits designated solely for such tribes (e.g., Bureau of Indian Affairs educational and law-enforcement assistance, Indian Health Service care), but they also benefit by and are subject to the federal government's trust doctrine and plenary power" (Wilkins 1997:369).

Guardianship/Wardship: "The legally specious characterization of the political relationship between tribes and the federal government, now largely defunct, often attributed to Chief Justice John Marshall in his 1831 ruling in *Cherokee Nation v. Georgia*, where he asserted that Indian tribes were not foreign nations but were 'domestic-dependent nations' whose relationship to the United States 'resembled that of a ward to a guardian.' As the federal government's allotment and assimilation campaign mushroomed in the 1880s, Marshall's analogy of Indian wardship to federal guardians became reified in the minds of federal policymakers and Bureau of Indian Affairs officials, who popularized the phrase and relied on it to justify any number of federal activities (e.g., suppression of Indian religious freedom, forced allotment of Indian lands, unilateral abrogation of Indian treaty rights) designed to hasten the assimilation of Indian peoples into mainstream American society. Despite the federal government's reliance on the phrase, Indian wardship and federal guardianship remained an illusion which was unsupported by legal authority or tribal consent" (Wilkins 1997:370).

Indian Claims Commission (ICC): "Congress established this commission in 1946 in an effort to resolve the hundreds of accumulated claims tribes had against the federal government, frequently stemming from the federal government's failure to fulfill prior treaty or agreement terms. Designed as a commission but working more as an adversarial judicial body, the commission awarded over $800 million on nearly 300 claims before it was terminated by Congress in 1978. A number of unresolved tribal claims were passed on to the U.S. Court of Claims" (Wilkins 1997:371).

In 1978, a map was prepared to indicate the regions occupied by specific tribes in the lower 48 states during the period of colonization. The multicolored map, entitled "Indian Land Areas Judicially Established," contained in the Indian Claims Commission final report, is still used to identify tribal historical ranges. The map is available online at http://222.gdsc.bia.gov/products/default.htm. Another version, divided into regional areas the user can enlarge on-screen, is available online at http://www.wes.army.mil/el/ccspt/natamap/usa_pg.html. The Indian Claims Commission records are

available from the National Archives. The Claims Court records contain all the legal papers from the Claims trials. The records include verbatim transcripts of testimony and address pertinent treaty provisions as well as present evidence of lands taken without negotiation or adequate compensation. Claims decisions are on microfiche available at most law libraries.

Indian Country: "Broadly, it is country within which Indian laws and customs and federal laws relating to Indians are generally applicable. But it is also defined as all the land under the supervision and protection of the United States government that has been set aside primarily for the use of Indians. This includes all Indian reservations and any other areas (e.g., all other Indian communities, including the various pueblos and Indian lands in Oklahoma, and individual Indian allotments which are still held in trust by the federal government) under federal jurisdiction and designated for Indian use. And according to some courts, it also includes privately held non-Indian lands within the boundaries of Indian reservations, rights-of-way (including federal and state highways), and any additional lands tribes may have acquired" (Wilkins 1997:371).

Indian Lands, DoD Definition: In 1998 the DoD instituted a American Indian and Alaska Native Policy. The definition it included for "Indian Lands" is "any lands title to which is either 1) held in trust by the U.S. for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the U.S. against alienation."

Indian Removal: "Federal policy enacted in 1830 and lasting into the 1850s which authorized the president to negotiate with a majority of eastern (and other) tribes for their relocation to lands west of the Mississippi River" (Wilkins 1997:371).

Indian Territory: "Lands west of the Mississippi River, principally present-day Oklahoma and Kansas. This area eventually became the home of many relocated eastern and other tribes, including the Five Civilized Tribes" (Wilkins 1997:371-372).

Indigenous: "The United Nations Working Group on Indigenous Populations defines indigenous populations as those 'composed of the existing descendants of peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, and by conquest, settlement or other means, reduced them to a nondominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant'" (Wilkins 1997:372).

Plenary Power: "Complete in all aspects or essentials. However, in federal Indian policy and law, this term has three distinct meanings: a) exclusive—Congress, under the Commerce Clause is vested with sole authority to regulate the federal government's affairs with Indian tribes; b) preemptive—Congress may enact legislation which effectively precludes state government's acting in Indian related matters; c) unlimited or absolute—this judicially created definition maintains that the federal government has virtually boundless governmental authority and jurisdiction over Indian tribes, their lands, and their resources" (Wilkins 1997:373-374).

Protected Tribal Resources, DoD definition: In the 1998 American Indian and Alaska Native Policy, the DoD defined "protected tribal resources" as "Those natural resources and properties of customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statues, judicial decisions, or executive orders, including tribal trust resources."

Reservation: Lands reserved for tribal use.

Reserved Rights Doctrine: "Judicially crafted concept which holds that tribal nations retain all rights (that is, to self-government, cultural expression, lands, water, hunting, fishing, etc.) which have not been expressly granted away in treaties or agreements" (Wilkins 1997:375).

Royce Maps: In 1899, Charles Royce produced a report for the Bureau of American Ethnology titled *Indian Land Cessions in the United States, 1784 to 1894* (Royce 1899). The report presents 67 maps linked to over 700 entries covering every land cession by, or reservation established for, Indian tribes. Each of the maps is numbered. Treaty land cessions are located by referring to the treaty entry on Royce's index and accessing the numbered maps showing the cession or reservation area in detail.

Although tribes may not agree with the finite boundaries of land cessions drawn by Royce, these maps provide a starting point for correlating the areas of treaty rights in ceded lands with lands currently occupied by DoD installations. Appendix A presents a list of all DoD installations considered for this project, their corresponding Royce Map numbers, if applicable, and a reference to the treaty in which tribes ceded those lands. Appendix C presents the Royce Maps showing the areas of all installations and relevant treaties cited in Chapter Four, Section One.

The entire Royce report, including maps, is available online at the *American Memory* website of the Library of Congress, at "*A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1873*"(http://lcweb2.loc.gov/ammem/amlaw/lawhome.html).

Sacred Sites: President Clinton issued an Executive Order in 1996 defining Sacred Sites for the purpose of ensuring that use of federal lands complies with federal laws affecting Native American cultural resources. The definition for "sacred site "is a "specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."

Sovereignty: The status, dominion, rule, or power of a sovereign. *See* Tribal Sovereignty.

Supremacy Clause: "Article VI, clause 2, which declares the federal Constitution and laws 'to be the Supreme Law of the Land,' provides to the federal government powers that cannot be exercised by the states and that the states must heed" (Wilkins 1997:375-376).

Treaty: "A formal agreement, compact, or contract between two or more sovereign nations that creates legal rights and duties for the contracting parties. A treaty is not only a law but also a contract between two nations and must, if possible, be so construed as to give full force and effect to all its parts. Treaties can be bilateral (involving only two nations) or multilateral and deal with single or multiple issues" (Wilkins 1997:376).

Treaty Clause: "The provision of the U.S. Constitution, Article II, section 2, which gives to the president the power 'by and with the consent of the Senate, to make treaties, provided two thirds of the Senators present concur'" (Wilkins 1997:376).

Treaty Reserved Rights: Treaty rights are those tribal rights retained or reserved by the treaty tribes. The tribes granted or guaranteed rights to the United States, such as land title, in exchange for protection and other goods and services. The reserved treaty rights of concern in this report mostly relate to treaty provisions that allow tribes to retain their right to access all or some of their ancestral lands for the purposes of hunting, fishing, or gathering vegetation.

Tribal Rights, DoD Definition: In the 1998 American Indian and Alaska Native Policy, the DoD defined "tribal rights" as **"**Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies."

Tribal Sovereignty: A basic principle of Indian law, supported by a host of legal decisions over the past centuries, holding that "*those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which have never been extinguished.* Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation." While Congress may limit specific aspects of this sovereignty, those powers not expressly limited remain within the realm of tribal sovereignty. Indian self-government includes "the power of an Indian tribe to adopt and operate under a form of government of the Indians' choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by municipal legislation, and to administer justice" (Cohen 1942:122-23; italics in original).

Trust Doctrine: "One of the unique foundational concepts underlying the political-moral relationship between the United States government and American Indian nations. The trust doctrine, also known as the trust relationship, has historical roots in several sources: in treaties and agreements with individual tribes; in the international law doctrine of trusteeship first broached in papal bulls and related documents during the time of European nations' first encounters with indigenous societies when the European states assumed a protective role vis-à-vis these societies and their territories; and in constitutional clauses, executive orders and policies, and statutory and case law. Broadly defined, the trust doctrine is the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage. The federal government, many courts have maintained, is to be held to the highest standards of good faith and honesty in its dealing with Indian peoples and their rights, resources, and funds. Nevertheless, since the trust doctrine is not explicitly constitutionally based, it is not enforceable against Congress, although it has occasionally proven a potent source of rights against the executive branch. Importantly, the trust doctrine, which is also referred to as a trustee-beneficiary relationship (with the federal government serving as the trustee and the tribes as the beneficiary) is not synonymous with the so-called guardian-ward relationship which was said to exist between the U.S. and tribes from the 1860s to the 1930s" (Wilkins 1997:377).

Usufruct: "The legal right of using and enjoying the fruits or profits of something belonging to another" (Merriam-Webster's Collegiate Dictionary, 10th edition).

APPENDIX H
LIST OF SOURCES

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