IN THE DISTRICT COURT IN AND FOR OTTAWA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. CF-2022-215**
	)	
STEVEN LEON FULLER,	)	
	)	
Defendant.	)	

STATE OF OKLAHOMA'S BRIEF IN SUPPORT OF ITS APPEAL FROM AN ADVERSE RULING OF MAGISTRATE JUDGE

The State of Oklahoma, by and through Gentner F. Drummond, Attorney General of the State of Oklahoma, hereby submits the following Brief in Support of its Appeal from the Adverse Ruling of Magistrate Judge. On March 30, 2023, Special District Judge Becky R. Baird granted the Defendant Steven Leon Fuller's Motion to Dismiss for Lack of Subject Matter Jurisdiction, based on *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), effectively sustaining a plea to the jurisdiction of the court pursuant to 22 O.S.2021, § 1089.1. For the reasons herein, the State respectfully submits that this ruling was in error, as the Defendant has not overcome the presumption that the State has jurisdiction over his criminal case.

STANDARD OF REVIEW

In a § 1089.1 appeal, this Court reviews both the magistrate judge's factual findings and his or her legal conclusions. *Newton v. State*, 1991 OK CR 127, ¶ 18, 824 P.2d 391, 395. Legal conclusions are reviewed *de novo*, "i.e., a non-deferential, plenary and independent review of the . . . legal ruling." *Smith v. State*, 2007 OK CR 16, ¶ 40 n. 8, 157 P.3d 1155, 1169 n. 8 (quotation marks omitted).

PROCEDURAL HISTORY

On November 1, 2022, the State charged the Defendant with one count of Driving a Motor Vehicle under the Influence of Alcohol, Second and Subsequent after Former Conviction of a Felony, in violation of 47 O.S.2021, § 902(A)(1); one count of Driving with License Canceled/Suspended/Revoked, in violation of 47 O.S.Supp.2022, § 6-303(B); one count of Failure to Wear a Seatbelt, in violation of 47 O.S.Supp.2022, § 12-417; and one count of Transporting Open Container of Alcoholic Beverage, in violation of 37A O.S.2021, § 6-101(A)(7).

On November 28, 2022, the Defendant filed, through counsel, a Motion to Dismiss Based on Lack of Subject Matter Jurisdiction, arguing that the alleged crimes occurred "within the limits of the Wyandotte Nation" and that he "is an enrolled member of the Cherokee Nation of Oklahoma." Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed 11/28/2022 ("Motion to Dismiss"), at unnum. p. 1. Although the Motion to Dismiss alleged the boundaries of the Wyandotte Nation were at issue, the Motion's argument section was devoted entirely to establishing that the *Cherokee* Nation's Reservation (or briefly and in the alternative, the *Muscogee* Nation's Reservation) had not been disestablished. *See, e.g.*, Motion to Dismiss, at unnum. p. 4 ("We next consider these same elements for the Cherokee Nation Jurisdictional Area."), unnumb. pp. 4-5 ("The history of the Cherokee Nation Jurisdictional Area parallels the Muscogee (Creek) Nation history . . . ."), unnum. p. 8 ("In sum, the Tenth Circuit's decision in *Murphy* strongly supports the conclusion that the Cherokee Nation's Reservation was never disestablished by subsequent congressional action."), unnum. p. 12 ("**STATE COURT LACKS JURISDICTION EVEN IN THE EVENT THAT SOME PORTION OF THE ACTS ALLEGED OCCURRED WITHIN THE CREEK NATION.**").

Special District Judge Becky R. Baird held an evidentiary hearing on the Defendant's Motion to Dismiss on March 30, 2023, after which she made the following findings of fact and conclusions of law:

> Testimony establishes that the Defendant is a member of the Cherokee Nation tribe which is a federally recognized tribe, has some quantum of Indian blood, and was a tribal member of the Cherokee Nation tribe at the time the alleged offense occurred. The testimony further establishes that the alleged crime took place within the historical boundaries of the Wyandotte reservation.
>
> The State requests the Court take judicial notice of the relevant treaties, as well as the "termination act" and "reinstatement act" and the Defendant does not object.
>
> The State argues that the "termination act" was the congressional action which disestablished the Wyandotte reservation, and that even if re-established thereafter, the Allotment Act enacted at statehood gave concurrent jurisdiction over criminal matters to the State of Oklahoma. The State announces that they have no other evidence of the Wyandotte reservation being disestablished by any Act of Congress.
>
> The Court finds, based on the arguments of counsel and the evidence and testimony introduced, that the above named defendant is an Indian, that there is insufficient evidence presented to demonstrate that the Wyandotte reservation has been disestablished, and the alleged crime was committed on Indian land. Thus, the State lacks jurisdiction to proceed with its prosecution for the same reasons as set out in McGirt v. Oklahoma, 591 U.S. ___ (2020). The Court would further note that the arguments put forth by the State are identical to those argued, unsuccessfully, before the United States Supreme Court and are thus not persuasive.

Court Order with Findings of Fact and Conclusions of Law, filed 03/31/2013 ("FFCL"), at unnum. p. 2.

The State timely filed an Application to Appeal from an Adverse Ruling of a Magistrate Judge and now submits the instant brief in support of its appeal to this Court.

ARGUMENT AND AUTHORITY

As the Supreme Court recently made clear, States *presumptively* have criminal jurisdiction within their borders. *See Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2503 (2022) ("[T]he

default is that States may exercise criminal jurisdiction within their territory."). "States do not need a permission slip from Congress to exercise their sovereign authority," and as such, "the default is that States have criminal jurisdiction in Indian country unless that jurisdiction is *preempted*." *Id.* For the reasons below, the Defendant has not overcome that presumption here.

A. The FFCL Failed to Hold the Defendant to *His* Burden

To begin with, respectfully, the FFCL issued by the special judge erred in failing to hold the defendant to *his* burden to show that the State lacks jurisdiction in this case. The Oklahoma Court of Criminal Appeals ("OCCA") has made clear that a defendant must present "*prima facie* evidence as to his legal status as an Indian and *as to the location of the crime as Indian Country*," before "the burden shifts to the State to prove it has subject matter jurisdiction." *Hogner v. State*, 2021 OK CR 4, ¶ 4, 500 P.3d 629, 631 (second emphasis added). "*Prima facie* evidence is evidence that is good and sufficient on its face, i.e., sufficient to establish a given fact . . . and which if not rebutted or contradicted, will remain sufficient to sustain a judgment in favor of the issue which it supports." *Williamson v. State*, 2018 OK CR 15, ¶ 35, 422 P.3d 752, 760. Furthermore, as quoted above, the Supreme Court could not have been clearer in *Castro-Huerta* that a State presumptively has jurisdiction within its borders.

Here, the Defendant did not even attempt to meet his burden of making a prima facie case that the alleged crimes occurred in Indian Country. As summarized above, the Motion to Dismiss recognized that the crimes occurred within the historical boundaries of the Wyandotte Nation,[1] but the Motion offered arguments only as to the Cherokee Nation Reservation (and, briefly, the

[1] Based on the location of the crimes as alleged in the Information and probable cause affidavit, as well as the State's review of the Bureau of Indian Affairs online map of tribal areas in the United States, the State does not dispute that the alleged crime occurred within the *historical* boundaries of the Wyandotte Nation. Nor does the State dispute that the Defendant has met the elements for Indian status.

Muscogee Nation Reservation). The FFCL correctly noted that the Wyandotte Nation's, not the Cherokee Nation's, boundaries were at issue, but then summarily rejected the State's arguments based on *McGirt*. But, as the Honorable Gary L. Lumpkin recently explained, the analysis is not so simple:

> In *Castro-Huerta*, the court found that "Indian country is part of the State, not separate from the State." *Castro-Huerta*, 142 S. Ct. at 2493. This finding is the opposite of that found in *McGirt*. . . .
>
> The *McGirt* decision is a one size fits all approach. The conflicts in existing law as to the methodology and analysis to be used in determining whether a reservation still exists must be analyzed and determined in order to provide the state and tribes the ability to make rational, consistent legal determinations.
>
> . . . [P]arties in pending cases should address the issues set out above before merely parroting the *McGirt* decision as the controlling authority on the question of whether a reservation exists.

State v. Hull, Case No. S-2021-110, Order Granting Motion to Dismiss Appeal, at 3-5 (OCCA Mar. 9, 2023) (Lumpkin, J., concurring in result).

Another indication of the complexity of this issue, and the fact that it is not neatly resolved by *McGirt*, is the State's long-pending appeals in other Ottawa County cases. The State's arguments in this case, concerning the Wyandotte Nation, are similar, if not identical to, the State's arguments concerning the historical territories of the Peoria, Miami, and Ottawa Nations, which are fully briefed and awaiting adjudication by the OCCA in *State v. Lee*, Case No. S-21-206; *State v. Bresster*, Case No. S-21-209; *State v. Spurgeon*, Case No. S-21-208; and *State v. Dixon*, Case No. S-21-205. These appeals have all been pending for more than a year, an unusual length of time for the OCCA. Thus, it does not appear that the OCCA considers the State's jurisdiction within Ottawa County to be an open-and-shut issue.

With respect, for all these reasons, it was error for the FFCL to find summarily, based on *McGirt*, that the Defendant had met his burden of overcoming State jurisdiction.

B. Alternatively, the State Will Demonstrate It Has Jurisdiction

Even notwithstanding the Defendant's abject failure to meet his burden, the State will nevertheless show that it has jurisdiction in this case. As quoted above, the FFCL concluded that the State lacked jurisdiction here because the alleged crimes occurred within the boundaries of the alleged Wyandotte Nation Reservation. *See* 18 U.S.C. § 1151(a) (defining "Indian country" to include, *inter alia*, "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation"). This conclusion was in error for two reasons.

First, the Wyandotte Nation Reservation was long ago extinguished. *Second*, alternatively, even assuming *arguendo* the Wyandotte Nation Reservation exists today, the General Allotment Act of 1887 provides the State jurisdiction over any fee land within the boundaries of the Wyandotte Nation, and the Defendant has failed to make a prima facie case that the location of his alleged crimes did not occur on such fee land.

1. The Wyandotte Nation Reservation was Extinguished.

a. Background. As the United States District Court for the District of Kansas succinctly summarized, "[b]eginning in the 1700s, the Wyandotte . . . were relocated and removed several times from Canada, Michigan, Ohio, and Kansas. In 1855, they were finally moved to Oklahoma. Many of these moves involved treaties in which the Wyandotte Nation ceded or relinquished land to the United States." *Kansas v. United States Dep't of Interior*, No. 220CV02386HLTGEB, 2020 WL 6868776, at *1 (D. Kan. Nov. 23, 2020) (unpublished). Relevant here, the final move occurred as a result of an 1855 treaty that "splinter[ed] . . . the Wyandottes into two groups—those who accepted [United States] citizenship and those who did not." *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1254 (10th Cir. 2001). The latter group, a "small group (approximately 200) who did not accept citizenship . . . were officially

reconstituted by Congress in 1867 as the Wyandotte Tribe" and "settled in Oklahoma on land that had formerly belonged to the Seneca Indians." *Id.*; *see also* Art. 1, Treaty with the Wyandot, 10 Stat. 1159 (1855) (attached as Exhibit 1); Arts. 1, 13, Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, etc., 15 Stat. 513 (1867) (attached as Exhibit 2).

Congress included the Wyandotte in the General Allotment Act (also called the Dawes Act). *See* 24 Stat. 388, 391 (Feb. 8, 1887) (attached as Exhibit 3) (omitting the Wyandotte from the list of Indian Territory tribes treated separately); *see also Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010, 1016 (8th Cir. 1999); *infra* Part B.2. As a result, "[i]n 1893, the Tribe's reservation was allotted to individual tribal members." *Wyandotte Nation v. Nat'l Indian Gaming Comm'n*, 437 F. Supp. 2d 1193, 1197 (D. Kan. 2006).

In the 1930s, Congress passed the Oklahoma Welfare Indian Act ("OWIA"), which allowed tribes in Oklahoma to organize as recognized entities and incorporate their own governments. *See* 25 U.S.C. §§ 5201-5210. In 1937, the Oklahoma band of Wyandotte reorganized under the OIWA. *Wyandot Nation of Kansas v. United States*, 858 F.3d 1392, 1395 (Fed. Cir. 2017).

In 1956, Congress passed legislation providing for the termination of the Wyandotte Nation of Oklahoma. *See* 70 Stat. 893 (Aug. 1, 1956) (attached as Exhibit 4). The act declares that its purpose "is to provide for the termination of Federal supervision over the trust and restricted property of the Wyandotte Tribe of Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians." *Id.* at 893. To accomplish that goal, it declares that, "[u]pon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and

its members has terminated." *Id.* at 896. It removes all restrictions on sale or encumbrance of land owned by members of the Wyandotte Nation. *See id.* at 894. It further specifies that "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe." *Id.* at 896. In addition to ending the applicability of federal law, it also extends State law: "**the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.**" *Id.* (emphasis added).

Congress repealed the termination of the Wyandotte Nation in 1978. *See* An Act to Reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as Federally Supervised and Recognized Indian Tribes, 92 Stat. 246 (May 15, 1978) (attached as Exhibit 5). The statute specifies that "There are hereby reinstated all rights and privileges of each of the tribes described in subsection (a) of this section and their members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to the Act relating to them which is repealed by subsection (b) of this section." *See id.* § 1(c). The statute then adds the following caveat: "Except as specifically provided in this subchapter, nothing contained in this subchapter shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied." *See id.* § 1(d).

b. Termination Ended the Wyandotte Reservation. Any reservation the Wyandotte Nation of Oklahoma acquired via the 1855 and 1867 treaties was terminated as a result of the 1956 termination act. Nothing in the subsequent restoration act alters this conclusion. Thus, because the historical boundaries of the Wyandotte do not constitute a reservation today, the FFCL erred in concluding that the crimes alleged here occurred in Indian country.

By terminating the Wyandotte, Congress terminated both their members and their lands from federal supervision. The Supreme Court has long held that the federal government cedes "its power of supervision over the tribe *and the reservation lands"* to a state when it passes a statute saying that state laws "shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within (its) jurisdiction." *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412 (1968) (emphasis added).

Here, Congress terminated the Wyandotte reservation in the same manner it terminated the Menominee reservation. The statute Congress used to terminate the Wyandotte is very similar to the statute that the Supreme Court interpreted in *Menominee Tribe*. *Compare id.*, *with* 70 Stat. 893, 896. Thus, like the Menominee reservation, the Wyandotte reservation ended with termination.

The Supreme Court has repeatedly confirmed that termination of federal supervision destroys reservation status. For example, in *Oregon Dep't of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 765–66, 768 (1985), the Supreme Court repeatedly referred to the Klamath Reservation as "terminated" based on a Termination Act that was, again, materially identical to the one at issue here. *Compare* Pub.L. 587, 68 Stat. 718-723, *as amended*, 25 U.S.C. §§ 564-564x, *with* 70 Stat. 963. The Court further "agree[d] with the Court of Appeals that Indians may enjoy special hunting and fishing rights that are independent of any ownership of land, and that, as demonstrated in 25 U.S.C. § 564m(b), the 1954 Termination Act for the Klamath Tribe, such rights may survive *the termination of an Indian reservation*." *Klamath Indian Tribe*, 473 U.S. at 766-67 (footnotes omitted, emphasis added).

The Supreme Court decided that termination statutes end reservations because land cannot be reservation land without being under federal superintendence. Federal superintendence is a

necessary element of reservation status. *See United States v. John*, 437 U.S. 634, 648 (1978). In *John*, the Supreme Court explained that Congress based the definition of Indian Country in § 1151(a) "on several decisions of [the] Court interpreting the term as it was used in various criminal statutes relating to Indians." *Id.* In particular, "[t]he principal test applied was drawn from [a case holding that the test is] whether the land in question 'had been validly set apart for the use of the Indians as such, *under the superintendence of the Government.*'" *Id.* at 648-49 (quoting *United States v. Pelican*, 232 U.S. 442, 449 (1914)) (emphasis added). In *John*, the Court concluded that "[t]he Mississippi lands in question" were a reservation for purposes of the Major Crimes Act where the lands "were declared by Congress to be held in trust by the Federal Government for the benefit of the Mississippi Choctaw Indians who were at that time *under federal supervision.*" *Id.* at 649 (emphasis added). Indeed, § 1151(a) plainly ties reservation status to federal superintendence, referring to "any Indian reservation *under the jurisdiction of the United States Government* . . . ." 18 U.S.C. § 1151(a) (emphasis added). And in *McGirt* itself, the Supreme Court held that the Five Tribes' reservations were not disestablished in part because Congress had chosen *not* to withdraw federal recognition of those tribes. *See McGirt*, 140 S. Ct. at 2466-68. The opposite is true of the Wyandotte.

Thus, lower courts are in agreement that the termination of federal supervision necessarily disestablishes and abolishes a reservation. *See Kimball v. Callahan*, 493 F.2d 564, 568-69 (9th Cir. 1974) (relying on *Menominee Tribe* to conclude that hunting, trapping, and fishing rights survived Klamath Tribe Termination Act, noting that "the Menominee Reservation had not been terminated" at time of Public Law 280, and likewise repeatedly referring to "former" Klamath Reservation); *Klamath Tribes of Oregon v. Pacificorp*, No. CV 04-644-CO, 2005 WL 8176609, at *3 (D. Or. Apr. 14, 2005), *report and recommendation adopted in part, rejected in part*, No. CIV.

04-644-CO, 2005 WL 1661821 (D. Or. July 13, 2005), *aff'd sub nom. Klamath Tribes of Oregon v. PacificCorp*, 268 F. App'x 575 (9th Cir. 2008); *Foreman v. Dep't of Rev.*, Case No. TC–MD 040844D, 2005 WL 1432450, *3-5 (Or. Tax Magistrate Div. May 16, 2005) (unpublished) (holding that lands subject to the Klamath Tribe Termination Act of 1954 were not "Indian country" within the meaning of § 1151(a) and were "not under the jurisdiction of the United States"). Indeed, because "a federal reservation is one form of federal recognition," a reservation cannot exist when Congress terminates recognition. *See* Mark D. Myers, *Federal Recognition of Indian Tribes in the United States*, 12 STAN. L. & POL'Y REV. 271, 286 n.105 (2001); *see also, e.g.*, Sarah L. Goss, *Pulling the "Plenary Authority" Card: The United States' "Get Out of Jail Free Card" in Membership Disagreements with Indian Tribes*, 43 Tulsa L. Rev. 119, 129 (2007) ("Terminated tribes . . . no longer have reservation lands"). Simply stated, land cannot be considered a reservation for purposes of § 1151(a) without federal superintendence.

Admittedly, at least two courts have concluded that the Wyandotte were "never actually terminated" because a certain tract of Wyandotte land described in the termination act, located in Kansas, was never sold as provided for in the act. *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1255 (10th Cir. 2001) ("The sale of the Huron Cemetery never occurred. This was due, apparently in part, to litigation filed against the United States by a group of Absentee Wyandots and the City of Kansas City, Kansas. The result, under the language of the 1956 Act, was that the Wyandotte Tribe was never actually terminated."); *see also Wyandotte Nation v. Nat'l Indian Gaming Comm'n*, 437 F. Supp. 2d 1193, 1196-98 (D. Kan. 2006) ("In 1956, the United States terminated federal supervision over the Tribe; the termination attempt was never completed because it was conditioned upon the United States purchasing the Huron Cemetery from the

Wyandotte—an event that never occurred.").[2] However, these cases should not control here for two reasons.

First, *McGirt* could not have been more clear that extratextual circumstances and considerations may not overcome Congress's clear intent in statutory language. "There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms." *McGirt*, 140 S. Ct. at 2469. Here, as to the Wyandotte, Congress—clearly aware of the requirement of federal superintendence for land to be considered a reservation, *see* 18 U.S.C. § 1151(a); *John*, 437 U.S. at 648-49 (citing 1914 case *Pelican*)—passed a statute "provid[ing] for the termination of Federal supervision over the trust and restricted property of the Wyandotte Tribe," 70 Stat. at 893, stating that "the Federal trust relationship to the affairs of the tribe and its members" would be "terminated," *id.* at 896, and dictating that "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe," *id.* In light of the federal superintendence requirement, it is hard to imagine how Congress could have more clearly abolished the Wyandotte Tribe's reservation, and extratextual considerations or circumstances may not be considered under *McGirt*. *See also McGirt*, 140 S. Ct. at 2463 (although disestablishment "does require that Congress clearly express its intent to do so," it "has never required any particular form of words" (quotation marks omitted)). *Second*, if the Wyandotte were not terminated, then there is no explanation for why Congress expressly made the Wyandotte part of the 1978 restoration act.

c. Federal re-recognition did not create a Wyandotte reservation.

Although the Wyandotte were eventually restored to federal recognition, the restoration act did

[2] Notably, the conclusion of these courts is contrary to Wyandotte Nation itself, which admits it was terminated. *See* https://wyandotte-nation.org/culture/our-history/ ("Twice we were terminated then reinstated as a tribe.").

not recreate their reservation. The repeal of a termination statute does not automatically revive everything that was terminated. *See* 1 U.S.C. § 108 ("Whenever an Act is repealed, which repealed a former Act, such former Act shall not thereby be revived, unless it shall be expressly so provided."). Instead, the repeal of the repeal of federal Indian status must specify what is revived. *See id.* To be sure, the restoration statute here opens with broad language of reinstating "all rights and privileges. . . which may have been diminished or lost" under the termination act. *See* 92 Stat. at 246, § 1(c). But it then limits that broad statement with the qualifier that "[e]xcept as specifically provided in this subchapter, nothing contained in this subchapter shall alter any property rights or obligations." *See id.* § 1(d). Altering the reservation status of land necessarily alters property rights by subjecting use of the land to federal or tribal limitations. Thus, because the statute did not alter "any property rights or obligations," no reservation was recreated.

Even if the statute lacked the qualifier regarding property rights, it would still fail to create a reservation because of its silence on the reservation question. In the restoration era, most restoration statutes commented explicitly on reservation status.

Several restoration statutes specifically granted a reservation comprised of land acquired by the United States and taken into trust. *See, e.g.*, Coos, Lower Umpqua, and Siuslaw Restoration Act, 98 Stat. 2250, § (7)(a) (1984). Other statutes specifically disclaimed the creation of a reservation. *See, e.g.*, Ponca Restoration Act, 104 Stat. 1167, § (4)(a) (1990); Siletz Indian Tribe Restoration Act, 91 Stat. 1415, § (3)(c) (1977). This statute is different in that it does not fit either description, making it at best permissive on the ability of the federal government to create a reservation by acquiring lands in the fee-to-trust process. The statute neither commands taking land into trust for a reservation, nor does it prohibit such action. But the federal government never

exercised that permission to actually acquire fee to the former Wyandotte reservation land and take that land into trust.[3]

Moreover, reading this silence to create a reservation would perversely give the Wyandotte greater rights than other tribes received who were explicitly granted a reservation. For example, the Menominee were allowed to convert land owned by Menominee Enterprises, Inc. into a trust-land reservation when conveying that land to the United States. *See* Menominee Restoration Act, 48 Stat. 984(6)(b) (1973). The Klamath were also given a reservation of any land given to the United States for that purpose, which the Secretary of the Interior is compelled to accept. *See* Klamath Indian Tribe Restoration Act, 100 Stat. 849(6) (1986). Neither was allowed to simply claim all of their historic lands at termination as a reservation, without more. A finding that the Wyandotte were silently given all of their historic reservation would paradoxically find that Congress created larger reservations by silence than it did by express provision. That is an unreasonable reading of the statutory scheme. In short, while other restoration acts explicitly granted a reservation to previously terminated tribes, "[t]he act repealing the termination acts of the Wyandotte, Peoria, Ottawa, and Modoc tribes of Oklahoma restores federal recognition of these tribes, but does not return their reservations to them." Michael C. Walch, *Terminating the Indian Termination Policy*, 35 STAN. L. REV. 1181, 1192-93 (1983).

Reading silence in the restoration act to create a reservation would also raise grave constitutional questions regarding Congress's ability to create reservations within a state without first acquiring title to the land. As a general matter, Congress has the power "[t]o regulate

[3] In general, a federal reservation is created when the fee is held by the federal government or the tribe. *Cf. Donnelly v. United States*, 228 U.S. 243, 260, 264 (1913); *Pine River Logging & Imp. Co. v. United States*, 186 U.S. 279, 284 (1902); *State of Minnesota v. Hitchcock*, 185 U.S. 373, 387-89 (1902).

Commerce . . . with the Indian Tribes," which gives it authority over existing reservations. *See* U.S. CONST. art 1, § 8, cl. 3. But Congress lacks the authority to acquire land within a state for exclusive jurisdiction except in "Places purchased by the Consent of the Legislature of the State." *See id.* art 1, § 8, cl. 17.[4] In general, courts have interpreted these clauses together to mean that Congress can acquire title to land and take it into trust for Indians as part of its commerce power over Indians. *See Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556, 566-72 (2d Cir. 2016); *but see Upstate Citizens for Equal., Inc v. United States*, 140 S. Ct. 2587 (2017) (Thomas, J., dissenting from denial of certiorari) (criticizing the Supreme Court's refusal to review this rule). That is the process that terminated-and-restored tribes use to obtain reservation lands. *See, e.g.*, Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 Cal. L. Rev. 1531, 1555 (2019).

Thus, if this Court finds that the restoration act silently reestablished the Wyandotte Nation Reservation, it would amount to finding that Congress was exercising a heretofore unrecognized power: to declare lands be reserved for Indians by fiat, stripping a state of a measure of its sovereignty and jurisdiction, even if within a state and even if the federal government failed to purchase or otherwise acquire the property in question.

While scholars may disagree about Congress's power over land to which it holds title, no authority supports the proposition that Congress can alter state jurisdiction over property that it has not acquired. Yet a finding of a reservation here leads exactly to that conclusion: that Congress was able to convert all of that state land into federal Indian land without even first acquiring the land. Under that rule, Congress could effectively eliminate a state from the Union, or drastically

[4] Oklahoma has not consented to acquisitions for Indian reservations without approval of the state legislature. *See* 80 O.S.2021, § 1(B).

curtail its jurisdiction without its consent, by merely declaring it a federal "reservation" with a simple statute. Because of the serious questions of Congress's constitutional authority it would raise, this Court should avoid reading the silence in the Wyandotte's restoration act in a manner that would implicitly re-create a reservation for the Wyandotte without the federal government first obtaining title to that land, as well as consent from the State, consistent with Article I, § 8 of the Constitution.[5] *See Crowell v. Benson*, 285 U.S. 22, 62, 52 S. Ct. 285, 296 (1932) ("[I]f a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."); *accord Cherokee News & Arcade, Inc. v. State*, 1974 OK CR 108, 533 P.2d 624, 628.

This Court should conclude that the Wyandotte restoration act does not create a reservation, either because of its textual limits on property rights or because its silence otherwise on the issue was insufficient to create a reservation and outside of the authority of Congress.

d. McGirt *Does Not Foreclose the State's Arguments.* As previously quoted, the FFCL summarily rejected the State's arguments based on *McGirt*, noting "that the arguments put forth by the State are identical to those argued, unsuccessfully, before the United States Supreme Court and are thus not persuasive." FFCL, at unnum. p. 2. With respect, this conclusion was error.

McGirt did not discuss disestablishment via termination, so it is unclear how *McGirt* could involve arguments "identical" to those made here. In fact, the Muscogee Nation's federal

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[5] It appears that, by the time of the termination act, the Wyandotte Nation of Oklahoma had little to no recognized land base. *Compare Wyandot Nation of Kansas*, 858 F.3d at 1394 ("The Treaty of 1867 set aside 20,000 acres of federally purchased lands in Oklahoma to become a reservation for a newly-constituted Wyandot Tribe . . . ."), Report of the Commissioner of Indian Affairs to the Secretary of the Interior, for the Fiscal Year Ended June 30, 1917, at 88 (excerpt attached as Exhibit 6) (noting that all acres within the Wyandotte's historical boundaries had been allotted and zero acres remained unallotted).

supervision was never terminated, and the State relied on very different statutes, concerning allotment and statehood, to argue disestablishment in that case. *See McGirt*, 140 S. Ct. at 2463, 2477. Rejecting the State's arguments, *McGirt* said that "Congress may have passed allotment laws to create the conditions for disestablishment. But to equate allotment with disestablishment would confuse the first step of a march with arrival at its destination." *Id.* at 2465. Here, in contrast, the State relies not on a "first step" of Congress, but on its "arrival at its destination." As explained in the background section above concerning Congress's historical treatment of the Wyandotte, Congress certainly marched toward disestablishment over the course of multiple decades and statutes—but, unlike with the Muscogee Nation, Congress did ultimately reach its destination with the Wyandotte Tribe, disestablishing the reservation when it terminated federal supervision of the Tribe.

2. Alternatively, the State has Jurisdiction Under the General Allotment Act

Alternatively, even assuming *arguendo* the Wyandotte Nation's Reservation exists today, the State nevertheless has jurisdiction on fee lands within the Wyandotte Nation's boundaries. Through the General Allotment Act, Congress explicitly subjected fee lands within the historic Wyandotte reservation to all state law, both criminal and civil. The Defendant has not alleged or presented prima facie evidence that the alleged crime did not occur on fee land—he has thus failed to overcome the *presumption* of State jurisdiction under *Castro-Huerta*.

a. Background. "In the late 19th century, the prevailing national policy of segregating lands for the exclusive use and control of the Indian tribes gave way to a policy of allotting those lands to tribe members individually," with "[t]he objectives of allotment" being "to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large." *County of Yakima v. Confederated Tribes & Bands of Yakima Indian*

Nation, 502 U.S. 251, 253-54 (1992). "Congress was selective at first, allotting lands under differing approaches on a tribe-by-tribe basis," but "[t]hese early efforts were marked by failure." *Id.* at 254. Thus, "Congress sought to solve these problems in the Indian General Allotment Act of 1887, also known as the Dawes Act, 24 Stat. 388, as amended, 25 U.S.C. § 331 *et seq.*, which empowered the President to allot most tribal lands nationwide without the consent of the Indian nations involved." *Id.*

In the General Allotment Act ("GAA"), Congress authorized the President "whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes" to "allot the lands in said reservation in severalty to any Indian located thereon." 24 Stat. 388, 388 § 1 (Feb. 8, 1887). The GAA further provided "[t]hat upon completion of said allotments and the patenting of the lands to said allottees, **each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State and Territory in which they may reside**." § 6, 24 Stat. at 390 (emphasis added); *County of Yakima*, 502 U.S. at 254 ("Section 6 of the Act furthered Congress' goal of assimilation by providing that 'each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside.'" (quoting 24 Stat. 390)). The GAA also conferred citizenship on allottees: "And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this Act . . . is hereby declared to be a citizen of the United States, and is entitle to all the rights, privileges, and immunities of such citizens." § 6, 24 Stat. at 390.

Congress included the Wyandotte in the GAA. *See id.* at 391 (omitting the Wyandotte from the list of Indian Territory tribes, such as the Five Tribes, not subject to the GAA). The Wyandotte lands were entirely allotted in the subsequent years. *See* Sixty-Second Annual Report of the Commissioner of Indian Affairs, Sept. 16, 1893, at 140 (excerpt attached as Exhibit 7) (confirming that 241 of 310 Wyandotte members had received allotments by 1893); Annual Reports of the Department of the Interior for the Fiscal Year Ended June 30, 1903, at 161 (excerpt attached as Exhibit 8) (confirming that 20,695 acres of Wyandotte land had been allotted and that only 535 acres remained as "[u]nallotted or tribal lands"). By the time of a 1917 report, 20,942 acres within the Wyandotte's historical boundaries had been allotted and zero acres remained unallotted. Ex. 6.

b. Even if the Court finds that the Wyandotte reservation has not been disestablished, the State still possesses jurisdiction if the crimes occurred on fee land as opposed to trust land. Even assuming *arguendo* States generally lack jurisdiction to try Indians who commit crimes within Indian Country (*but see* Part B.3, *infra*), Congress can "expand[] state criminal jurisdiction" in Indian country by "pass[ing] a law conferring jurisdiction" on the state, *McGirt*, 140 S. Ct. at 2478. Here, assuming the Wyandotte reservation was not disestablished by termination, most of the Wyandotte reservation was subjected to state jurisdiction during allotment.

In a series of cases, the Supreme Court considered the effect of the GAA on state jurisdiction. Shortly before Oklahoma statehood, the Supreme Court considered the question of whether § 6 of the GAA subjected an Indian to state law property taxes. *See Goudy v. Meath*, 203 U.S. 146, 148 (1906). The Court concluded that it does, citing both (1) that Indian-owned property

subject to all the laws of the State is necessarily subject to taxation and (2) that citizens are subject to taxation. *See id.* at 149-150.

The Court then considered the power of the GAA's § 6 citizenship provisions in 1916. *See United States v. Nice*, 241 U.S. 591 (1916). A liquor seller in South Dakota was arrested for selling whiskey to an Indian who had received both an allotment and citizenship. *See id.* at 595. The Court held that Congress could prohibit liquor sales to Indians regardless of land status. *See id.* at 597. The Court further held that "[c]itizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians." *Id.* at 598. Thus, it concluded that the citizenship provisions of the GAA did not free individual Indians from federal control. *See id.* at 601.

Many years later, the Court again reviewed and considered the GAA's § 6. In *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, the Court considered whether a state could impose taxes and fees affecting the sale of cigarettes between Indians on a reservation. 425 U.S. 463, 467-68, 480 (1976). The State of Montana asserted that § 6 of the GAA subjected the entire reservation to state law. *See id.* at 477. The Court rejected this argument for two reasons. First, it observed that lands held in trust for the tribe are not subject to the GAA. *See id.* at 478. Because half the reservation fit that category, it could not be assumed state law applied to the whole reservation. *See id.* Second, the Court asserted that checkerboard jurisdiction—distinguishing between trust land and fee land—would be "impractical" and would violate Congress's "clear intent" to avoid a checkerboard approach. *See id.* at 479. It cited the Indian Reorganization Act of 1934 as a repudiation of the policies underlying the GAA. *See id.* Thus, it concluded that the taxes were properly enjoined despite § 6 of the GAA. *See id.* at 480-81.

The Court subsequently clarified *Moe* by rejecting its second rationale. In *County of Yakima*, the Court considered whether a county could impose ad valorem taxes on allotted lands and excise taxes on sales of those lands. 502 U.S. at 253. It reaffirmed the holding in *Goudy* regarding applicability of state law on land patented in fee under the GAA. *Id.* at 258-59. The Court then recognized that *Moe* was concerned with *trust* land, not fee land. *Id.* at 261. But it rejected the reasoning in *Moe* that suggested § 6 was implicitly repealed by 1930s legislation or that checkerboard jurisdiction is always disallowed. *See id.* at 262-63, 265. Instead, it concluded that *Goudy* and *Moe* are best read to be about § 5 of the GAA (regarding the alienability of land) and that these decisions, along with the proviso in the Burke Act (that allowed for early removal of the trust status of land and imposition of state taxes) meant that, with respect to taxation of such Burke Act lands, state taxation is permissible *in rem* even if not *in personam*. *See id.* at 262-65. Thus, ultimately, *County of Yakima* addressed the Burke Act proviso regarding "taxation of . . . land"—holding that state ad valorem taxes were permissible but excise taxes impermissible under this proviso—and clarified that § 6 of the GAA, which provides for state civil and criminal jurisdiction where applicable, was not implicitly repealed. *See id.* at 265-70.

Finally, in *United States v. Hallam*, the Tenth Circuit considered the issue of income taxes on a Quapaw which, like the Wyandotte, were not among the Indian Territory tribes exempt from the GAA. 304 F.2d 620 (10th Cir. 1962). It held that such tribes were subject to the GAA, and that while they were exempt from the Burke Act amendments, that "exception clause in the 1906 amendment to Section 6 of the General Allotment Act . . . , even if broad enough to exclude the Quapaws from the amendment, could not except them from the General Allotment Act." *Id.* at 622.

Under the reasoning of these cases together, it is apparent that § 6 of the GAA brings the Wyandotte's allotted fee land within state jurisdiction (*Goudy*) but does not remove the Wyandotte themselves from federal Indian status (*Nice*) nor does it subject trust lands to state jurisdiction (*Moe* and *County of Yakima*). Moreover, while state personal taxes may not be able to be imposed under the Burke Act (*County of Yakima*), the Wyandotte are still subject to the GAA (*Hallam*). Thus, the land may even still be considered reservation land and yet subject to state jurisdiction if it was allotted and subjected to Section 6 of the GAA. As a result, the existence of a Wyandotte reservation does not on its own answer whether the state has jurisdiction in this case.

The Defendant has offered no allegation or evidence as to whether the alleged crimes here occurred on reservation fee lands subject to state jurisdiction under § 6 of the GAA or occurred on tribal trust lands outside the GAA's provisions. Accordingly, the Defendant has, again, failed to overcome the presumption of State jurisdiction under *Castro-Huerta*.

c. McGirt *Does Not Foreclose the State's GAA Argument.* Again, the FFCL stated that the State's arguments were "identical" to those rejected in *McGirt*. FFCL, at unnum. p. 2. To the extent the FFCL suggested the State's GAA argument was "identical" to an argument rejected in *McGirt*, the FFCL again erred. Among several other Oklahoma tribes, the Muscogee were expressly exempted from the GAA. § 8, 24 Stat. at 391. Thus, *McGirt* did not—and could not have—decided the GAA issue advanced by the State here. Moreover, although *McGirt* did reject a different statutory argument by the State—that the MCA is not applicable to the former Indian Territory by virtue of the Oklahoma Enabling Act—the reasoning relied on by *McGirt* has now been repudiated by *Castro-Huerta*. *Compare McGirt*, 140 S. Ct. at 2477–78 (because "the federal government promised Indian Tribes the right to continue to govern themselves," "this Court has long required a clear expression of the intention of Congress before the state or federal

government may try Indians for conduct on their lands" (quotation marks omitted, alterations adopted)), *with Castro-Huerta*, 142 S. Ct. at 2503 ("[T]he default is that States may exercise criminal jurisdiction within their territory. States do not need a permission slip from Congress to exercise their sovereign authority." (citation omitted)).

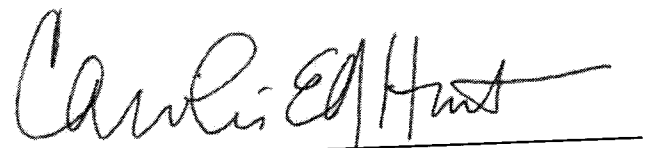
CONCLUSION

For all these reasons, the State respectfully urges this Court to reverse the Special Judge's order granting the Defendant's Motion to Dismiss.

Respectfully Submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

JIMMY R. HARMON, OBA #17834
SENIOR DEPUTY ATTORNEY GENERAL



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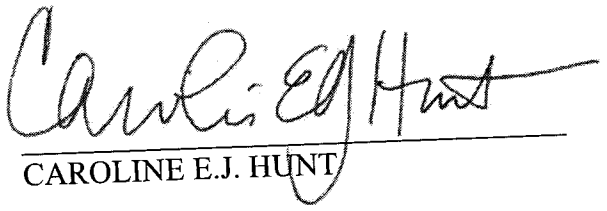
ATTORNEYS FOR PLAINTIFF
THE STATE OF OKLAHOMA

CERTIFICATE OF MAILING

On this 21st day of April, 2023, a true and correct copy of the foregoing was mailed to:

Terry D. Allen Jr.
112 N Vann St
Pryor, OK 74361



CAROLINE E.J. HUNT

Wen-a-hap, S'klallam sub-chief, his x mark. [L. S.]
Klew-sum-ah, S'klallam sub-chief, his x mark. [L. S.]
Se-att-home-tau, S'klallam sub-chief, his x mark. [L. S.]
Tsat-sat-hoot, S'klallam tribe, his x mark. [L. S.]
Pe-an-ho, S'klallam tribe, his x mark. [L. S.]
Yi-ah-hum, or John Adams, S'klallam tribe, his x mark. [L. S.]
Ti-itch-stan, S'klallam tribe, his x mark. [L. S.]
Soo-yahntch, S'klallam tribe, his x mark. [L. S.]
Ttseh-a-take, S'klallam tribe, his x mark. [L. S.]
He-ats-at-soot, S'klallam tribe, his x mark. [L. S.]
Tow-oots-hoot, S'klallam tribe, his x mark. [L. S.]
Tsheh-ham, or General Pierce, S'klallam tribe, his x mark. [L. S.]
Kwin-nas-sum, or George, S'klallam tribe, his x mark. [L. S.]
Hai-ahts, John, S'klallam tribe, his x mark. [L. S.]
Hai-otest, John, S'klallam tribe, his x mark. [L. S.]
Seh-win-num, S'klallam tribe, his x mark. [L. S.]
Yai-tst, or George, S'klallam tribe, his x mark. [L. S.]
He-pait, or John, S'klallam tribe, his x mark. [L. S.]
Slimm, or John, S'klallam tribe, his x mark. [L. S.]
T'klalt-soot, or Jack, S'klallam tribe, his x mark. [L. S.]
S'tai-tan, or Sam, S'klallam tribe, his x mark. [L. S.]
Hut-tets-oot, S'klallam tribe, his x mark. [L. S.]
How-a-owl, S'klallam tribe, his x mark. [L. S.]

Executed in the presence of us—

M. T. Simmons,
C. H. Mason, secretary Washington Territory,
Benj. F. Shaw, interpreter,
John H. Scranton,
Josiah P. Keller,
C. M. Hitchcock, M. D.,
A. B. Gove,
H. A. Goldsborough,
B. J. Madison,
F. A. Rowe,
Jas. M. Hunt,
George Gibbs, secretary,
John J. Reilly,
Robt. Davis,
S. S. Ford, Jr.,
H. D. Cock,
Orrington Cushman,
J. Conklin.

TREATY WITH THE WYANDOT, 1855.

Jan. 31, 1855.

10 Stat., 1159.
Ratified Feb. 20, 1855.
Proclaimed Mar. 1, 1855.

Articles of agreement and convention made and concluded at the city of Washington on the thirty-first day of January, one thousand eight hundred and fifty-five, by George W. Manypenny, as commissioner on the part of the United States, and the following-named chiefs and delegates of the Wyandott tribe of Indians, viz: Tan-roo-mee, Matthew Mudeator, John Hicks, Silas Armstrong, George J. Clark, and Joel Walker, they being thereto duly authorized by said tribe.

Wyandots to be citizens of the United States.

ARTICLE 1. The Wyandott Indians having become sufficiently advanced in civilization, and being desirous of becoming citizens, it is hereby agreed and stipulated, that their organization, and their relations with the United States as an Indian tribe shall be dissolved and terminated on the ratification of this agreement, except so far as the further and temporary continuance of the same may be necessary in the execution of some of the stipulations herein; and from and after the date of such ratification, the said Wyandott Indians, and each and every of them, except as hereinafter provided, shall be deemed, and are hereby declared, to be citizens of the United States, to all intents and purposes; and shall be entitled to all the rights, privileges, and immunities of such citizens; and shall in all respects be subject to the laws of the United States, and of the Territory of Kansas in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory, shall be extended over the Wyandott country in the same manner as over other parts of said Territory. But such of the said Indians as may so desire and make application accordingly, to the commissioners hereinafter provided for, shall be exempt from the immediate operation of the preceding provisions, extending citizenship to the Wyandott Indians, and shall have continued to them the assistance and protection of the United States, and

Exceptions.

an Indian agent in their vicinity, for such a limited period or periods of time, according to the circumstances of the case, as shall be determined by the Commissioner of Indian Affairs; and on the expiration of such period or periods, the said exemption, protection, and assistance shall cease; and said persons shall then, also, become citizens of the United States, with all the rights and privileges, and subject to the obligations, above stated and defined.

Cession by Wyandot of land purchased of the Delawares.

ARTICLE 2. The Wyandott Nation hereby cede and relinquish to the United States, all their right, title, and interest in and to the tract of country situate in the fork of the Missouri and Kansas Rivers, which was purchased by them of the Delaware Indians, by an agreement

9 Stat., 337.

dated the fourteenth day of December, one thousand eight hundred and forty-three, and sanctioned by a joint resolution of Congress approved July twenty-fifth, one thousand eight hundred and forty-eight, the object of which cession is, that the said lands shall be subdivided, assigned, and reconveyed, by patent, in fee-simple, in the

Partition of said lands among the Wyandot.

manner hereinafter provided for, to the individuals and members of the Wyandott Nation, in severalty; except as follows, viz: The portion now enclosed and used as a public burying-ground, shall be permanently reserved and appropriated for that purpose; two acres, to include the church-building of the Methodist Episcopal Church, and the present burying-ground connected therewith, are hereby reserved, granted, and conveyed to that church; and two acres, to include the church-building of the Methodist Episcopal Church South, are hereby reserved, granted, and conveyed to said church. Four acres, at and adjoining the Wyandott ferry, across and near the mouth of the Kansas River, shall also be reserved, and, together with the rights of the Wyandotts in said ferry shall be sold to the highest bidder, among the Wyandott people, and the proceeds of sale paid over to the Wyandotts. On the payment of purchase-money in full, a good and sufficient title to be secured and conveyed to the purchaser, by patent from the United States.

Same subject.

ARTICLE 3. As soon as practicable after the ratification of this agreement, the United States shall cause the lands ceded in the preceding article to be surveyed into sections, half and quarter sections, to correspond with the public surveys in the Territory of Kansas; and three commissioners shall be appointed—one by the United States, and two by the Wyandott council—whose duty it shall be to cause any additional surveys to be made that may be necessary, and to make a fair and just division and distribution of the said lands among all the individuals and members of the Wyandott tribe; so that those assigned to or for each shall, as nearly as possible, be equal in quantity, and also in value, irrespective of the improvements thereon; and the division and assignment of the lands shall be so made as to include the houses, and, as far as practicable, the other improvements, of each person or family; be in as regular and compact a form as possible, and include those for each separate family all altogether. The judgment and decision of said commissioners, on all questions connected with the division and assignment of said lands, shall be final.

On the completion of the division and assignment of the lands as aforesaid, said commissioners shall cause a plat and schedule to be made, showing the lands assigned to each family or individual, and the quantity thereof. They shall also make up carefully prepared lists of all the individuals and members of the Wyandott tribe—those of each separate family being arranged together—which lists shall exhibit, separately, first, those families the heads of which the commissioners, after due inquiry and consideration, shall be satisfied are sufficiently intelligent, competent, and prudent to control and manage their affairs and interests, and also all persons without families.

Second, those families the heads of which are not competent and proper persons to be entrusted with their shares of the money, payable

under this agreement; and, third, those who are orphans, idiots, or insane. Accurate copies of the lists of the second and third of the above classes, shall be furnished by the commissioners to the Wyandott council; whereupon said council shall proceed to appoint or designate the proper person or persons to be recognized as the representatives of those of the second class, for the purpose of receiving and properly applying the sums of money due and payable to or for them, as hereinafter provided, and also those who are to be entrusted with the guardianship of the individuals of the third class, and the custody and management of their rights and interests; the said acts or proceedings of the council, duly authenticated, to be forwarded to the Commissioner of Indian Affairs, and filed in his office; and the same shall be annually revised by the said council, until the payment of the last instalment of the moneys payable to the Wyandotts, under this agreement, and such change or changes made therein as may, from casualties or otherwise, become necessary; such revisions and changes, duly authenticated, to be communicated to, and subject to the approval of, the Commissioner of Indian Affairs.

The said commissioners shall likewise prepare a list of all such persons and families among the Wyandott people as may apply to be temporarily exempted from citizenship and for continued protection and assistance from the United States and an Indian agent, as provided for in the first article of this agreement. The agent through and by whom such protection and assistance is to be furnished, shall be designated by the Commissioner of Indian Affairs.

The aforesaid plat and schedule, and lists of persons, duly authenticated by the commissioners, shall be forwarded to the Commissioner of Indian Affairs, and filed in his office, and copies of the said plat and schedule, and of the list of persons temporarily exempted from citizenship and entitled to the continued protection and assistance of the United States and an Indian agent, duly attested by the commissioners, shall be filed by them in each of the offices of the secretary of the Territory of Kansas, and the clerk of the county in which the Wyandott lands are situated.

Patents to issue.

ARTICLE 4. On the receipt, by the Commissioner of Indian Affairs, of the plat and schedule, lists of persons, and of the first proceedings of the Wyandott council, mentioned in the next preceding article, patents shall be issued by the General Land-Office of the United States, under the advisement of the Commissioner of Indian Affairs, to the individuals of the Wyandott tribe, for the lands severally assigned to them, as provided for in the third article of this agreement, in the following manner, to wit: To those reported by the commissioners to be competent to be entrusted with the control and management of their affairs and interests, the patents shall contain an absolute and unconditional grant in fee-simple; and shall be delivered to them by the Commissioner of Indian Affairs, as soon as they can be prepared and recorded in the General Land-Office: but to those not so competent, the patents shall contain an express condition, that the lands are not to be sold or alienated for a period of five years; and not then, without the express consent of the President of the United States first being obtained; and the said patents may be withheld by the Commissioner of Indian Affairs, so long as, in his judgment, their being so withheld may be made to operate beneficially upon the character and conduct of the individuals entitled to them.

None of the lands to be thus assigned and patented to the Wyandotts, shall be subject to taxation for a period of five years from and after the organization of a State government over the territory where they reside; and those of the incompetent classes shall not be aliened or released for a longer period than two years, and shall be exempt from levy, sale, or forfeiture, until otherwise provided by State legislation, with the assent of Congress.

Appraisement of the improvements of the Methodist Episcopal Church and Methodist Episcopal Church South.

ARTICLE 5. Disinterested persons, not to exceed three, shall be appointed by the Commissioner of Indian Affairs, to make a just and fair appraisement of the parsonage houses, and other improvements connected therewith, on the Wyandott lands, belonging to the Methodist Episcopal Church, and the Methodist Episcopal Church South, the amounts of which appraisements shall be paid to the said churches, respectively, by the individual or individuals of the Wyandott tribe, to whom the lands on which said houses and improvements are, shall have been assigned under the provisions of this agreement; said payments to be made within a reasonable time, in one or more instalments, to be determined by said appraisers; and until made in full, no patent or other evidence of title to the lands so assigned to said individual or individuals, shall be issued or given to them.

Release of claims under treaties.

ARTICLE 6. The Wyandott Nation hereby relinquish, and release the United States from all their rights and claims to annuity, school moneys, blacksmith establishments, assistance and materials, employment of an agent for their benefit, or any other object or thing, of a national character, and from all the stipulations and guarantees of that character, provided for or contained in former treaties, as well as from any and all other claims or demands whatsoever, as a nation, arising under any treaty or transaction between them and the Government of the United States; in consideration of which release and relinquishment, the United States hereby agree to pay to the Wyandott Nation, the sum of three hundred and eighty thousand dollars, to be equally distributed and paid to all the individuals and members of the said nation, in three annual instalments, payable in the months of October, commencing the present year; the shares of the families whose heads the commissioners shall have decided not to be competent or proper persons to receive the same, and those of orphans, idiots, and insane persons, to be paid to and receipted for by the individuals designated or appointed by the Wyandott council to act as their representatives and guardians.

Payment in lieu thereof.

Such part of the annuity, under the treaty of one thousand eight hundred and forty-two, as shall have accrued, and may remain unpaid, at the date of the payment of the first of the above-mentioned instalments, shall then be paid to the Wyandotts, and be in full, and a final discharge of, said annuity.

Additional payments.

ARTICLE 7. The sum of one hundred thousand dollars, invested under the treaty of one thousand eight hundred and fifty, together with any accumulation of said principal sum, shall be paid over to the Wyandotts, in like manner with the three hundred and eighty thousand dollars mentioned in the next preceding article; but in two equal annual instalments, commencing one year after the payment of the last instalment of said above-mentioned sum. In the mean time, the interest on the said invested fund, and on any accumulation thereof, together with the amount which shall be realized from the disposition of the ferry and the land connected therewith, the sale of which is provided for in the second article of this agreement, shall be paid over to the Wyandott council, and applied and expended, by regular appropriation of the legislative committee of the Wyandott Nation, for the support of schools, and for other purposes of a strictly national or public character.

Persons entitled to land and money.

ARTICLE 8. The persons to be included in the apportionment of the lands and money, to be divided and paid under the provisions of this agreement, shall be such only as are actual members of the Wyandott Nation, their heirs and legal representatives, at the date of the ratification hereof, and as are entitled to share in the property and funds of said nation, according to the laws, usages, and customs thereof.

Grantees under former treaty of 1842 permitted to locate elsewhere.

ARTICLE 9. It is stipulated and agreed, that each of the individuals, to whom reservations were granted by the fourteenth article of the treaty of March seventeenth, one thousand eight hundred and forty-two, or their heirs or legal representatives, shall be permitted to select and locate said reservations, on any Government lands west of the States of Missouri and Iowa, subject to pre-emption and settlement, said reservations to be patented by the United States, in the names of the reservees, as soon as practicable after the selections are made; and the reservees, their heirs or proper representatives, shall have the unrestricted right to sell and convey the same; whenever they may think proper; but, in cases where any of said reservees may not be sufficiently prudent and competent to manage their affairs in a proper manner, which shall be determined by the Wyandott council, or where any of them have died, leaving minor heirs, the said council shall appoint proper and discreet persons to act for such incompetent persons and minor heirs in the sale of the reservations, and the custody and management of the proceeds thereof—the persons so appointed, to have full authority to sell and dispose of the reservations in such cases, and to make and execute a good and valid title thereto.

The selections of said reservations, upon being reported to the surveyor-general of the district in which they are made, shall be entered upon the township plats, and reported, without delay, to the Commissioner of the General Land-Office, and patents issued to the reservees, accordingly. And any selection of, settlement upon, or claim to, land included in any of said reservations, made by any other person or persons, after the same shall have been selected by the reservees, their heirs or legal representatives, shall be null and void.

Expenses; how to be borne.

ARTICLE 10. It is expressly understood, that all the expenses connected with the subdivision and assignment of the Wyandott lands, as provided for in the third article hereof, or with any other measure or proceeding, which shall be necessary to carry out the provisions of this agreement, shall be borne and defrayed by the Wyandotts, except those of the survey of the lands into sections, half and quarter sections, the issue of the patents, and the employment of the commissioner to be appointed by the United States; which shall be paid by the United States.

ARTICLE 11. This instrument shall be obligatory on the contracting parties whenever the same shall be ratified by the President and the Senate of the United States.

In testimony whereof, the said George W. Manypenny, commissioner as aforesaid, and the said chiefs and delegates of the Wyandott tribe of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

Geo. W. Manypenny, [L. S.]
Tan-roo-mee, his x mark. [L. S.]
Mathew Mudeater, [L. S.]
John Hicks, his x mark. [L. S.]
Silas Armstrong, [L. S.]
Geo. J. Clark, [L. S.]
Joel Walker, [L. S.]

Executed in presence of—
A. Cumming, superintendent Indian affairs,
Robert S. Neighbors, special agent,
Will. P. Ross, Cherokee delegate,
J. T. Cochrane.

TREATY WITH THE SENECA, MIXED SENECA AND SHAWNEE, QUAPAW, ETC., 1867.

Feb. 23, 1867.

15 Stats., 513.
Ratified June 18, 1868.
Proclaimed Oct. 14, 1868.

Articles of agreement, concluded at Washington, D. C., the twenty-third day of February, one thousand eight hundred and sixty-seven, between the United States, represented by Lewis V. Bogy, Commissioner of Indian Affairs, W. H. Watson, special commissioner, Thomas Murphy, superintendent of Indian Affairs, George C. Snow, and G. A. Colton, U. S. Indian agents, duly authorized, and the Senecas, represented by George Spicer and John Mush; the Mixed Senecas and Shawnees, by John Whitetree, John Young, and Lewis Davis; the Quapaws, by S. G. Vallier and Ka-zhe-cah; the Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, by Baptiste Peoria, John Mitchell, and Edward Black; the Miamies, by Thomas Metosenyah and Thomas Richardville, and the Ottawas of Blanchard's Fork and Roche de Bœuf, by John White and J. T. Jones, and including certain Wyandott[e]s, represented by Tauromee, or John Hat, and John Karaho.

Preamble.

Whereas it is desirable that arrangements should be made by which portions of certain tribes, parties hereto, now residing in Kansas, should be enabled to remove to other lands in the Indian country south of that State, while other portions of said tribes desire to dissolve their tribal relations, and become citizens; and whereas it is necessary to provide certain tribes, parties hereto, now residing in the Indian country, with means of rebuilding their houses, re-opening their farms, and supporting their families, they having been driven from their reservations early in the late war, and suffered greatly for several years, and being willing to sell a portion of their lands to procure such relief; and whereas a portion of the Wyandottes, parties to the treaty of one thousand eight hundred and fifty-five, although taking lands in severalty, have sold said lands, and are still poor, and have not been compelled to become citizens, but have remained without clearly recognized organization, while others who did become citizens are unfitted for the responsibilities of citizenship; and whereas the Wyandottes, treated with in eighteen hundred and fifty-five, have just claims against the Government, which will enable the portion of their people herein referred to to begin anew a tribal existence: Therefore it is agreed:

Cession of lands to the United States by the Seneca.

ARTICLE 1. The Senecas cede to the United States a strip of land on the north side of their present reservation in the Indian country; the land so ceded to be bounded on the east by the State of Missouri, on the north by the north line of the reservation, on the west by the Neosho River, and running south for the necessary distance, to contain twenty thousand acres; for which the Government is to pay twenty thousand dollars upon the ratification of this treaty; the south line of said tract to be ascertained by survey, at the cost of the United States.

Further cession.

ARTICLE 2. The Senecas now confederated with the Shawnees, and owning an undivided half of a reservation in the Indian country immediately north of the Seneca reservation mentioned in the preceding article, cede to the United States one-half of said Seneca and Shawnee reserve, which it is mutually agreed shall be the north half, bounded on the east by the State of Missouri, north by the Quapaw reserve, west by the Neosho River, and south by an east and west line bisecting the present Seneca and Shawnee reserve into equal parts, the said line to be determined by survey, at the expense of the United States; for which tract of land, estimated to contain about thirty thousand acres, the United States will pay the sum of twenty-four thousand dollars.

Cession of lands to the United States by the Shawnee.

ARTICLE 3. The Shawnees, heretofore confederated with the Senecas, cede to the United States that portion of their remaining lands, bounded as follows, beginning at a point where Spring River crosses the south line of the tract in the second article ceded to the United States, thence down said river to the south line of the Shawnee reserve, thence west to the Neosho River, thence up said river to the south line of the tract ceded in the second article, and thence east to the place of beginning; supposed to contain about twelve thousand acres, the area to be ascertained by survey, at the expense of the United States; the United States to pay for the same at the rate of one dollar per acre, as soon as the area shall be ascertained.

By the Quapaw.

ARTICLE 4. The Quapaws cede to the United States that portion of their land lying in the State of Kansas, being a strip of land on the north line of their reservation, about one half mile in width, and containing about twelve sections in all, excepting therefrom one half section to be patented to Samuel G. Vallier, including his improvements. Also the further tract within their present reserve, bounded as follows: Beginning at a point in the Neosho River where the south line of the Quapaw reserve strikes that stream, thence east three miles, thence north to the Kansas boundary-line, thence west on said line to the Neosho River, thence down said river to the place of beginning; and the United States will pay to the Quapaws for the half-mile strip lying in Kansas at the rate of one dollar and twenty-five cents per acre, whenever the area of the same shall be ascertained; and for the other tract described in this article at the rate of one dollar and fifteen cents per acre, whenever the area of the same shall be ascertained by survey, said survey to be made at the cost of the tribe to which said tract is herein provided to be sold under the pre-emption laws of the United States; but all such pre-emption shall be paid in the money of the United States, at the proper land-office, within one year from the date of entry and settlement.

PROVISIONS RELATING TO THE SENECAS.

Seneca to separate from the Shawnee.

ARTICLE 5. The Senecas now confederated with the Shawnees, the said Shawnees thereto consenting, agree to dissolve their connection with the said Shawnees, and to unite with the Senecas, parties to the treaty of February twenty-eighth, one thousand eight hundred and thirty-one, upon their reservation described in article second of said treaty; and the several bands of Senecas will unite their funds into one common fund for the benefit of the whole tribe; and an equitable division shall be made of all funds or annuities now held in common by the Senecas and Shawnees.

Payments to the Seneca.

ARTICLE 6. Of the sum of twenty-four thousand dollars to be paid to the Senecas, as provided in the second article, the sum of four thousand dollars shall be paid to them immediately after the ratification of this treaty, to enable them to re-establish their homes and provide themselves with agricultural implements, seed, and provisions for themselves and their families; and the balance of the said first-mentioned sum, being twenty thousand dollars, shall be consolidated with the twenty thousand dollars in the first article provided to be paid, and invested for the tribe of Senecas, as constituted by this treaty, at five per cent. interest, to be paid per capita semi-annually; and their annuity of five hundred dollars in specie, provided by article four of the treaty of September twenty-ninth, one thousand eight hundred and seventeen, shall likewise become the property of the tribe.

Payments for improvements in agriculture.

ARTICLE 7. The amount annually due the Senecas under the provisions of article four of the treaty of February twenty-eight, one thousand eight hundred and thirty-one, for blacksmith, after their separation from the Shawnees, shall be annually paid to them as a

national fund, to enable them to purchase such articles for their wants and improvements in agriculture as the chiefs, with the consent of their agent, may designate; and this provision shall apply also to the fund for support of a miller belonging to the Senecas heretofore occupying the southernmost reserve referred to in this treaty; and there shall be added to the said fund whatever amount belonging to either band of the Senecas shall be found due and unpaid upon an examination of their accounts with the Government, and particularly the amount of bonds and stocks invested in their name; and the interest thereon shall be annually paid to the said Senecas for the purposes mentioned in this article.

PROVISIONS RELATING TO THE SHAWNEES.

Payments to the Shawnee.

ARTICLE 8. Of the amount in the third article provided to be paid to the Shawnees by the United States for the lands therein ceded, the sum of two thousand dollars shall be advanced to them to be used in establishing their homes, and the balance of the said amount shall be invested for the said tribe, under the name of Eastern Shawnees, and five per cent. be paid semi-annually thereon; and the amount due and unpaid upon the bonds or stocks invested in their name shall be paid to them, as well as the interest thereon hereafter to become due, to be used under the direction of the chiefs, with the consent of the agent, for the purchase of agricultural implements or other articles necessary for the general welfare of the people; and the one-half of the blacksmith fund remaining after the division to be made with the Senecas provided for in article five shall remain devoted to the same purpose, and the Government will add thereto the sum of five hundred dollars annually for five years.

PROVISIONS RELATING TO THE QUAPAWS.

Payment to the Quapaw.

ARTICLE 9. Of the amount to be paid to the Quapaws for the lands ceded by them in the fourth article of this treaty, the sum of five thousand dollars shall be paid to them upon the ratification of this treaty, to assist them in re-establishing themselves at their homes upon their remaining reservation; and the balance of said amount shall be invested as a permanent fund at five per cent. interest, payable per capita, semi-annually.

School fund.

ARTICLE 10. If the Osage mission school should be closed, so that the school fund of the Quapaws cannot be used for them to advantage at that institution, the said fund shall remain in the Treasury of the United States until such time as it can, under the direction of the Secretary of the Interior, with the consent of the chiefs, be used to advantage in establishing a school upon their reservation.

Aid in agriculture.

ARTICLE 11. The amount now due and unpaid for a farmer, under the provisions of the third article of their treaty of May thirteen one thousand eight hundred and thirty-*eight* [three], may be used by the chiefs and council for the purchase of provisions, farming-implements, seed, and otherwise for the purpose of assisting the people in agriculture; and their annual income now paid for farmer shall hereafter be set apart for the purposes of assistance and improvement in agriculture.

CLAIMS FOR LOSSES BY THE WAR.

Claims for losses by the war.

Commission to investigate claims.

ARTICLE 12. Whereas the aforesaid Senecas, Mixed Senecas and Shawnees, and Quapaws were driven from their homes during the late war, and their property destroyed, it is agreed that a commission of not to exceed two persons shall be appointed by the Secretary of the Interior, who shall proceed to their country and make careful investigation of their claims for losses, and make full report of the same to the Department; and the Secretary of the Interior shall report the same to Congress.

PROVISIONS IN RELATION TO THE WYANDOTTES.

Lands set apart for the Wyandot.

ARTICLE 13. The United States will set apart for the Wyandottes for their future home the land ceded by the Senecas in the first article hereof, and described in said article, to be owned by the said Wyandottes in common; and the Secretary of the Interior is hereby authorized and required to appoint three persons whose duty it shall be to ascertain and report to the Department the amount of money, if any, due by the United States to the Wyandott[e] Indians under existing treaty stipulations, and the items mentioned in Schedule A, appended to this treaty, and the report of the persons so appointed, with the evidence taken, shall be submitted to Congress for action at its next session. A register of the whole people, resident in Kansas and elsewhere, shall be taken by the agent of the Delawares, under the direction of the Secretary of the Interior, on or before the first of July, one thousand eight hundred and sixty-seven, which shall show the names of all who declare their desire to be and remain Indians, and in a tribal condition, together with incompetents and orphans, as described in the treaty of one thousand eight hundred and fifty-five; and all such persons, and those only, shall hereafter constitute the tribe: *Provided*, That no one who has heretofore consented to become a citizen, nor the wife or children of any such person, shall be allowed to become members of the tribe, except by the free consent of the tribe after its new organization, and unless the agent shall certify that such party is, through poverty or incapacity, unfit to continue in the exercise of the responsibilities of citizenship of the United States, and likely to become a public charge.

Payment.

Register to be taken.

Who to constitute the tribe.

Proviso.

Upon completion of register amount to be divided.

ARTICLE 14. Whenever the register in the next preceding article shall have been completed and returned to the Commissioner of Indian Affairs, the amount of money in said article acknowledged to be due to the Wyandott[e]s shall be divided, and that portion equitably due to the citizens of said people shall be paid to them or their heirs, under the direction of the Secretary of the Interior; and the balance, after deducting the cost of the land purchased from the Senecas by the first article hereof, and the sum of five thousand dollars to enable the Wyandott[e]s to establish themselves in their new homes, shall be paid to the Wyandott[e] tribe per capita.

Remainder, how to be applied.

Certain restrictions upon sales of lands removed.

ARTICLE 15. All restrictions upon the sale of lands assigned and patented to "incompetent" Wyandott[e]s under the fourth article of the treaty of one thousand eight hundred and fifty-five, shall be removed after the ratification of this treaty, but no sale of lands heretofore assigned to orphans or incompetents shall be made, under decree of any court, or otherwise, for or on account of any claim, judgment, execution, or order, or for taxes, until voluntarily sold by the patentee or his or her heirs, with the approval of the Secretary of the Interior; and whereas many sales of land belonging to this class have heretofore been made, contrary to the spirit and intent of the treaty of one thousand eight hundred and fifty-five, it is agreed that a thorough examination and report shall be made, under direction of the Secretary of the Interior, in order to ascertain the facts relating to all such cases, and, upon a full examination of such report, and hearings of the parties interested, the said Secretary may confirm the said sales, or require an additional amount to be paid, or declare such sales entirely void, as the very right of the several cases may require.

PROVISIONS RELATING TO THE OTTAWAS.

Sale of land to the Ottawa.

ARTICLE 16. The west part of the Shawnee reservation, ceded to the United States by the third article, is hereby sold to the Ottawas, at one dollar per acre; and for the purpose of paying for said reservation the United States shall take the necessary amount, whenever

Payment.

the area of such land shall be found by actual survey, from the funds in the hands of the Government arising from the sale of the Ottawa trust-lands, as provided in the ninth article of the treaty of one thousand eight hundred and sixty-two, and the balance of said fund, after the payment of accounts provided for in article five of the treaty of one thousand eight hundred and sixty-two, shall be paid to the tribe per capita.

Provisions of former treaty as to members of the tribe becoming citizens extended.

ARTICLE 17. The provisions of the Ottawa treaty of one thousand eight hundred and sixty-two, under which all the tribe were to become citizens upon the sixteenth of July, one thousand eight hundred and sixty-seven, are hereby extended for two years, or until July sixteenth, one thousand eight hundred and sixty-nine; but any time previous to that date any member of the tribe may appear before the United States district court for Kansas, and declare his intention to become a citizen, when he shall receive a certificate of citizenship, which shall include his family, and thereafter be disconnected with the tribe, and shall be entitled to his proportion of the tribal fund; and all who shall not have made such declaration previous to the last-mentioned date shall still be considered members of the tribe. In order to enable the tribe to dispose of their property in Kansas, and remove to their new homes and establish themselves thereon, patents in fee-simple shall be given to the heads of families and to all who have come of age among the allottees under the treaties of one thousand eight hundred and sixty-two, so that they may sell their lands without restriction; but the said lands shall remain exempt from taxation so long as they may be retained by members of the tribe down to the said sixteenth of July, one thousand eight hundred and sixty-nine; and the chiefs and council of the said tribe shall decide in the case of disputed heirship to real estate, taking as a rule the laws of inheritance of the State of Kansas.

Payment to individuals for losses.

ARTICLE 18. The United States agree to pay the claim of J. T. Jones, for which a bill of appropriation has passed one of the branches of Congress, but which has been withdrawn from before Congress, being for destruction by fire of his dwelling and other property by whites in one thousand eight hundred and fifty-six, shall be allowed and paid to him, amounting to six thousand seven hundred dollars.

Education and schools.

ARTICLE 19. The sixth article of the treaty of one thousand eight hundred and sixty-two shall remain unchanged, except as provided in this article. The children of the tribe between the ages of six and eighteen (6 and 18) shall be entitled to be received at said institution, and to be subsisted, clothed, educated, and attended in sickness, where the sickness is of such a nature that the patient promises a return to study within a reasonable period; the children to be taught and practised in industrial pursuits, suitable to their age and sex, and both sexes in such branches of learning, and to receive such advantages as the means of the institution will permit; these rights and privileges to continue so long as any children of the tribe shall present themselves for their exercise. And the Secretary of the Interior and the senior corresponding secretary of the American Baptist Home Mission Society shall be members *ex officio* of the board of trustees, with power to vote in person or by proxy; it being the special intention of this provision to furnish additional supervision of the institution, so that the provisions of this article may be carried into effect in their full spirit and intent.

Sale of lands to Ottawa University.

ARTICLE 20. It is further agreed that the remaining unsold portion of trust-lands of the Ottawas, amounting to seven thousand two hundred and twenty-one and twenty one-hundredths acres, shall be sold to the trustees of Ottawa University, to be disposed of for the benefit of said institution at the appraised value thereof, and that the said

trustees shall have until July sixteenth, one thousand eight hundred and sixty-nine, to dispose of the same and pay to the Government the value of said lands: *Provided*, That the said trustees shall furnish, within thirty days after the ratification of this treaty, to the Secretary of the Interior, a satisfactory bond for the fulfilment of their obligations.

PROVISIONS RELATING TO THE PEORIAS, KASKASKIAS, WEAS, AND PIANKESHAWS.

Purchasers of land from the Peoria, etc., to receive patents.

ARTICLE 21. Whereas certain arrangements have been made by the chiefs of the confederated tribes of Peorias, Kaskaskias, Weas, and Piankeshaws, for the sale to actual settlers of the lands held by them in common, being nine and one-half sections, for a reasonable consideration, according to the terms of a certain petition of the said tribe, with schedule annexed, (which schedule is annexed to this treaty, and marked "B,") dated December twenty-sixth, one thousand eight hundred and sixty-six, filed in the office of the Commissioner of Indian Affairs, it is agreed that the said arrangements shall be carried into full effect, and the purchasers thereunder shall receive patents from the United States for the lands so purchased, upon making full payment for the same to the Secretary of the Interior, and the amount already paid by said purchasers, as appears from said schedule, and in the hands of the chiefs, shall be paid to the Secretary of the Interior, and the whole amount of the purchase-money shall also be paid to the said Secretary on or before the first day of June, one thousand eight hundred and sixty-seven, and shall be held by him for the benefit of the tribe, subject to the provisions of this treaty.

Lands sold to the Peoria, etc.

ARTICLE 22. The land in the second and fourth articles of this treaty proposed to be purchased from the Senecas and Quapaws, and lying south of Kansas, is hereby granted and sold to the Peorias, &c., and shall be paid for, at the rate paid for the same by the Government, out of the proceeds of the nine and a half sections referred to in the last preceding article, adding thereto whatever may be necessary out of other moneys in the hands of the United States belonging to said Peorias, &c.

Indians to remove to new homes within, etc.

ARTICLE 23. The said Indians agree to dispose of their allotments in Kansas and remove to their new homes in the Indian country within two years from the ratification of this treaty; and to that end the Secretary of the Interior is authorized to remove altogether the restrictions upon the sales of their lands, provided under authority of the third article of the treaty of May thirtieth, one thousand eight hundred and fifty-four, in such manner that adult Indians may sell their own lands, and that the lands of minors and incompetents may be sold by the chiefs, with the consent of the agent, certified to the Secretary of the Interior and approved by him. And if there should be any allotments for which no owner or heir thereof survives, the chiefs may convey the same by deed, the purchase-money thereof to be applied, under the direction of the Secretary, to the benefit of the tribe; and the guardianship of orphan children shall remain in the hands of the chiefs of the tribe, and the said chiefs shall have the exclusive right to determine who are members of the tribe and entitled to be placed upon the pay-rolls.

Amounts due the Indians to be paid them.

ARTICLE 24. An examination shall be made of the books of the Indian Office, and an account-current prepared, stating the condition of their funds, and the representations of the Indians for overcharges for sales of their lands in one thousand eight hundred and fifty-seven and one thousand eight hundred and fifty-eight shall be examined and reported to Congress; and in order further to assist them in preparing for removal and in paying their debts, the further amount of twenty-

Further allowances.

five thousand dollars shall be at the same time paid to them per capita from the sum of one hundred and sixty-nine thousand six hundred and eighty-six dollars and seventy-five cents, invested for said Indians under act of Congress of July twelfth, one thousand eight hundred and sixty-two; and the balance of said sum of one hundred and sixty-nine thousand six hundred and eighty-six dollars and seventy-five cents, together with the sum of ninety-eight thousand dollars now invested on behalf of the said Indians in State stocks of Southern States, and the sum of three thousand seven hundred dollars, being the balance of interest, at five per cent. per annum, on thirty-nine thousand nine hundred and fifty dollars held by the United States, from July, one thousand eight hundred and fifty-seven, till vested in Kansas bonds in December, one thousand eight hundred and sixty-one, after crediting five thousand dollars thereon heretofore receipted for by the chiefs of said Indians, shall be and remain as the permanent fund of the said tribe, and five per cent. be paid semi-annually thereon, per capita, to the tribe; and the interest due upon the sum of twenty-eight thousand five hundred dollars in Kansas bonds, and upon sixteen thousand two hundred dollars in United States stocks, now held for their benefit, shall be paid to the tribe semi-annually in two equal payments, as a permanent school-fund income: *Provided*, That there shall be taken from the said invested fund and paid to the said tribe, per capita, on the first of July, one thousand eight hundred and sixty-eight, the sum of thirty thousand dollars, to assist them in establishing themselves upon their new homes; and at any time thereafter, when the chiefs shall represent to the satisfaction of the Secretary of the Interior that an additional sum is necessary, such sum may be taken from their invested fund: *And provided also*, That the said invested fund shall be subject to such division and diminution as may be found necessary in order to pay those who may become citizens their share of the funds of the tribe.

1862, ch. 156, 12 Stat., 539.

Proviso.

Certain taxes to be refunded.

ARTICLE 25. Whereas taxes have been levied by the authority of the State of Kansas upon lands allotted to members of the tribe, the right and justice of which taxation is not acknowledged by the Indians, and on which account they have suffered great vexation and expense, and which is now a matter in question in the Supreme Court of the United States, it is agreed that, in case that court shall decide such taxes unlawful, the Government will take measures to secure the refunding of said taxes to such of the Indians as have paid them.

Miami may be united with the Peoria, etc.

ARTICLE 26. The Peorias, Kaskaskias, Weas, and Piankeshaws agree that the Miamies may be confederated with them upon their new reservation, and own an undivided right in said reservation in proportion to the sum paid, upon the payment by the said Miamies of an amount which, in proportion to the number of the Miamies who shall join them, will be equal to their share of the purchase-money in this treaty provided to be paid for the land, and also upon the payment into the common fund of such amount as shall make them equal in annuities to the said Peorias, &c., the said privilege to remain open to the Miamies two years from the ratification of this treaty.

Blacksmith's iron and steel.

ARTICLE 27. The United States agree to pay the said Indians the sum of one thousand five hundred dollars per year for six years for their blacksmith, and for necessary iron and steel and tools; in consideration of which payment the said tribe hereby relinquish all claims for damages and losses during the late war, and, at the end of the said six years, any tools or materials remaining shall be the property of the tribe.

Register to be taken.

ARTICLE 28. Inasmuch as there may be those among them who may desire to remain in Kansas and become citizens of the United States, it is hereby provided that, within six months after the ratification of this treaty, a register shall be taken by the agent, which shall show the

names separately of all who voluntarily desire to remove, and all who desire to remain and become citizens; and those who shall elect to remain may appear before the judge of the United States district court for Kansas and make declaration of their intention to become citizens, and take the oath to support the Constitution of the United States; and upon filing of a certificate of such declaration and oath in the office of the Commissioner of Indian Affairs they shall be entitled to receive the proportionate share of themselves and their children in the invested funds and other common property of the tribe; and therefrom they and their children shall become citizens, and have no further rights in the tribe; and all the females who are heads of families, and single women of full age shall have the right to make such declaration and become disconnected from the tribe. Those wishing to remain may become citizens.

Articles 29 to 39, inclusive. [Stricken out.]

ARTICLE 40. If any amendments shall be made to this treaty by the Senate, it shall only be necessary to submit the same for the assent of the particular tribe or tribes interested; and should any such amendments be made, and the assent of the tribe or tribes interested not be obtained, the remainder of the treaty not affected by such amendment shall nevertheless take effect and be in force. Amendments.

ARTICLE 41. [Stricken out.]

In testimony whereof, the before-named commissioners on behalf of the United States, and the before-named delegates on behalf of the Senecas, mixed Senecas and Shawnees, Quapaws, confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas, and Wyandottes have hereunto set our hands and seals the day and year first above written. Signature.

Lewis V. Bogy, [SEAL.]
Commissioner of Indian Affairs.
W. H. Watson, [SEAL.]
Special Commissioner.
Thos. Murphy, [SEAL.]
Superintendent of Indian Affairs.
G. C. Snow, [SEAL.]
United States Indian Agent, Neosho Agency.
G. A. Colton, [SEAL.]
United States Indian Agent for Miamis, Peorias, &c.

George Spicer, his x mark, [SEAL.]
John Mush, his x mark, [SEAL.]
Senecas.

John Whitetree, his x mark, [SEAL.]
John Young, his x mark, [SEAL.]
Lewis Davis, his x mark, [SEAL.]
Senecas and Shawnees.

S. G. Valier, [SEAL.]
Ka-she-cah, his x mark, [SEAL.]
Quapaws.

Baptiste Peoria, his x mark, [SEAL.]
John Mitchell, his x mark, [SEAL.]

Edward Black, [SEAL.]
Peorias, &c.

Thomas Metosenyah, his x mark, [SEAL.]
Thos. F. Richardville, [SEAL.]
Miamies.

John Wilson, his x mark, [SEAL.]
J. T. Jones, [SEAL.]
Ottawas.

Tauromee, his x mark, [SEAL.]
John Karaho, his x mark, [SEAL.]
Wyandottes.

In presence of—

Frank Valle, his x mark,
United States Interpreter
for Osage River Agency.

John B. Roubideau, his x mark,
United States Interpreter
for Miamis.

Wm. Hurr, Interpreter for Ottawas.

Geo. Wright, Interpreter for Wyandottes.
Abelard Guthrie.
George B. Jonas.
Thos. E. McGraw.
Lewis S. Hayden.
Charles Sims.
R. McBratney.

Witnesses to signature of Lewis Davis:

G. L. Young.
G. C. Snow,
United States Indian Agent.

A.—*Schedule showing the several items embraced in the sum agreed to be paid to the Wyandottes by the thirteenth article of the foregoing treaty.*

1. Annuity due under the 6th article of the treaty of January 31, 1855	$8,750.00
2. Amount discounted on $53,594.53 in State bonds on the 13th of May, 1859	15,187.03
3. Interest on the above $15,787.03 [$15,187.03] from May 13th, 1859, to February, 1867, at 5 per cent	6,150.87
4. Amount discounted on $53,000 in State bonds, March 24, 1860	11,130.00
5. Interest on the above $11,130 from March 24, 1860, to February 24, 1867	4,618.95
6. Moneys heretofore appropriated in fulfilment of treaty stipulations, but transferred to the surplus fund	3,635.05
7. Amount for depredations on Wyandotte property, claim approved by Secretary of the Interior, March 21st, 1862	34,342.50
Total amount	$83,814.40

The above-named total sum is designed to represent the full claim of the Wyandottes against the United States under former treaties.

The 1st, 2d, and 4th items, together with another named in the 14th article of the foregoing treaty, were examined and approved by the House Committee on Indian Affairs, and their payment recommended.—(See Congressional Globe, page 1037, part 2d, 2d session of 38th Congress.)

The 3d and 5th items constitute the interest on the moneys discounted on the bonds mentioned in items 2 and 4. Although the committee did not recommend the payment of this interest, they acknowledged its justice, but said that its allowance would possibly endanger the passage of the appropriation, as the general feeling was averse to paying interest on claims.

The 7th item embraces several small amounts for schools, blacksmith, &c., which were due and appropriated at the date of the treaty, but not paid, and were afterwards transferred to the surplus fund.

The 8th item is for depredations on Wyandotte property during the Kansas troubles and the entire emigration to California. It was examined and approved by the Secretary of the Interior, March 21, 1862.

B.—*Names of settlers, Nos. of land and price thereof, together with the amount deposited by each settler on the ten-section reserve, in Miami County, Kansas.*

Names.	Quarter.	Section.	Township.	Range.	Number of acres.	Price per acre.	Sum deposited.	Total.
Andrew J. Sinclair	E. ½	23	16	24	320	$4 00	$426 66	$1,280 00
Zacheus Hays	NW. and E. ½ SW. and SE. of NW.	26	16	---	160	4 75		
		22	---	---	120	4 50	433 00	1,300 00
Randolph Boyd	NE	26	---	---	160	4 75	253 33	760 00
John Nichols and William Gray.	W. ½ SE	---	---	---	80	3 75	100 00	300 00
John Martin	SE	19	---	25	160	5 25		
Same	S. ½ SE	18	---	---	80	5 00	500 00	1,240 00
David H. Banta	SW	19	---	---	160	5 00	267 00	800 00
Reuben Fellows	SW	27	---	24	160	4 00	214 00	640 00
J. T. Pifer	NW	---	---	---	160	3 50	186 00	560 00
Leroy W. Martin	NE	19	---	25	160	5 25	200 00	840 00
Charles Converse	E. ½ NW. and W. ½ and NE. ¼ of NE.	30	---	---	200	4 25		850 00
	SE	31	---	---	160	4 25	226 66	840 00
Benjamin Wingrove	SW. of SE	30	---	---	40	4 00		
Same	SW	31	---	---	160	4 00	213 33	640 00
Samuel McKinney	NE	6	17	---	160	3 30	165 00	528 00
Squire James Waller	E. ½	27	16	24	320	4 50	480 00	1,440 00
George A. Whitaker	E. ½ SE. and SE. of NE.	28	---	---	120	4 00	-------	480 00
William Smith	N. ½ and SW. ¼ of NW., and NW. ¼ of SW.	6	17	25	160	4 00	215 00	640 00
Edward Morgan	S. ½ NE	22	16	24	80	3 50	95 00	280 00
Albert Benndorf								

B.—*Names of settlers, Nos. of land and price thereof, together with the amount deposited by each settler on the ten-section reserve, in Miami County, Kansas*—Continued.

Names.	Quarter.	Section.	Township.	Range.	Number of acres.	Price per acre.	Sum deposited.	Total.
Charles Martin	NW., S. ½, and NW. ¼ of SW.	†	16	25	280	3 50	.....	980 00
Francis Hastings and William Morgan, jr.	Half	23	...	24	320	4 00	426 66	1,280 00
Joel O. Loveridge, Geo. W. Loveridge, Alfred Loveridge, jointly.	E. ½ and SW. ¼ of SW.	‡	.....	.....	760	4 00	1,013 33	3,040 00
Isaac Shaw	NE	1	17	24	160	5 00	250 00	800 00
Jacob Sims	SE	13	16	24	160	3 50	.....	560 00
Zacheus Hays	SW	26	16	24	160	3 50	.....	560 00
Town tract*	N. ½	31	...	25	320	4 00	.....	1,280 00
Ambrose Shields	NE	34	16	24	160	3 50	.....	560 00
Anthony Cott	SE	22	16	24	160	3 00	.....	480 00
Edward Dagenett	.....	...	17	25	80	4 00	.....	320 00
Total	.....	.....	.....	.....	5,680	.....	5,664 97	22,278 00

* This tract to be conveyed to David Perry and Chas. Sims, on payment of said one thousand two hundred and eighty dollars by June first.

† 19 and 18.

‡ 24 and 13.

The three last-named are half-breed Indians, who will become citizens. Said Shields has 5 children, said Cott 3, and Dagenette 2. William Smith, the settler aforesaid, has a half-breed wife and 2 children. He takes said 120 acres in full of the interest of his family in net proceeds of the reserve, and is to pay one hundred and sixty dollars ($160) besides.

Said Shields, Cott, and Dagenett take their respective tracts at the price stated, in lieu of a like sum of the shares of themselves and families in the net proceeds of the reserve: *Provided*, That, should the share of either family in the net proceeds of the reserves be less than the price agreed for the land taken by the head of such family, then the deficit to be paid in money as by other settlers. The title in each of the four cases last mentioned to be made jointly to the various members of the family by name, whose shares in said proceeds pay for same.

Joshua Clayton takes SE. ¼ section 36, township 16, range 24, 160 acres, at $4 per acre, and deposits $213; total payment, $640.00.

Knoles Shaw, W. ½ of SE. ¼ section 6, town[ship] 17, range 25, 80 acres; has deposited $94; total payment, $280.00.

Thos. Morgan and John W. Majors take E. ½ of said quarter, at $3 per acre; deposited, $9; total, $240.00.

There *is* [are] 80 acres untaken, for which a purchaser will be named by the chiefs before 1st June next.

Total land disposed of, 6,000 acres.

Total money deposited, $5,970.00.

Total amount at prices agreed, 23,438.00.

The above lands to be patented to the persons aforesaid, or their representatives, on prompt payment of the price agreed, by 1st June, 1867: *Provided*, That if any settler refuse or neglect to pay as aforesaid, then the tract of land by him claimed to be sold under sealed bids.

which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Annual report of Commission.

SEC. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Exceptions to provisions of this act.

SEC. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

Proviso. Pending litigation not affected.

Appropriation.

SEC. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Commission to be appointed and organized at once.

Law to take effect in 60 days.

SEC. 24. That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage.

Approved, February 4, 1887.

Feb. 4, 1887.

CHAP. 105.—An act to amend the law relating to patents, trade-marks, and copyright.

Unauthorized use of patented design unlawful.

R. S., sec. 4933, p. 954.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter, during the term of letters patent for a design, it shall be unlawful for any person other than the owner of said letters patent, without the license of such owner, to apply the design secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied.

Penalty.

Any person violating the provisions, or either of them, of this section, shall be liable in the amount of two hundred and fifty dollars; and in case the total profit made by him from the manufacture or sale, as aforesaid, of the article or articles to which the design, or colorable imitation thereof, has been applied, exceeds the sum of two hundred and fifty dollars, he shall be further liable for the excess of such profit over and above the sum of two hundred and fifty dollars; and the full amount of such liability may be recovered by the owner of the letters patent, to his own use, in any circuit court of the United States having jurisdiction of the parties, either by action at law or upon a bill in equity for an injunction to restrain such infringement.

Suits.

Remedy by existing law not impaired.

SEC. 2. That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

Approved, February 4, 1887.

Feb. 8, 1887.

CHAP. 119.—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

President authorized to allot land in severalty to Indians on reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

Distribution.

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Provisos.

Allotment pro rata if lands insufficient.

Allotment by treaty or act not reduced.

Additional allotment of lands fit for grazing only.

Selection of allotments.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

Improvements.

Proviso.

On failure to select in four years, Secretary of the Interior may direct selection.

Allotments to be made by special agents and Indian agents.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Certificates.

Indians not on reservations, etc., may make selection of public lands.

SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Fees to be paid from the Treasury.

Patent to issue.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be

To be held in trust.

Conveyance in fee after 25 years.

Provisos.

Period may be extended.

Laws of descent and partition.

Negotiations for purchase of lands not alloted.

Lands so bought to be held for actual settlers if arable.

prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void.

Patent to issue only to person taking as homestead.

Purchase money to be held in trust for Indians.

And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law.

Religious organizations.

Indians selecting lands to be preferred for police, etc.

And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Citizenship to be accorded to allottees and Indians adopting civilized life.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Secretary of the Interior to prescribe rules for use of waters for irrigation.

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Lands excepted.

SEC. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Appropriation for surveys.

SEC. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Rights of way not affected.

SEC. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Southern Utes may be removed to new reservation.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

Feb. 8, 1887.

CHAP. 120.—An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes.

Certain lands granted to New Orleans, Baton Rouge and Vicksburg R. R. Co. forfeited. Vol. 16, p. 579.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, are hereby declared to be forfeited to the United States of America in all that part of said grant which is situate on the east side of the Mississippi River, and also in all that part of said grant on the west of the Mississippi River which is opposite to and coterminous with the part of the New Orleans Pacific Railroad Company which was completed on the fifth day of January, eighteen hundred and eighty-one; and said lands are restored to the public domain of the United States.

Certain lands confirmed to New Orleans Pacific R. R. Co., assignee of New Orleans, Baton Rouge and Vicksburg R. R. Co.

SEC. 2. That the title of the United States and of the original grantee to the lands granted by said act of Congress of March third, eighteen hundred and seventy-one, to said grantee, the New Orleans, Baton Rouge and Vicksburg Railroad Company, not herein declared forfeited, is relinquished, granted, conveyed, and confirmed to the New Orleans Pacific Railroad Company, as the assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, said lands to be located in accordance with the map filed by said New Orleans Pacific Railway Company in the Department of the Interior October twenty-seventh, eighteen hundred and eighty-one and November seventeenth, eighteen hundred and eighty-two, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States.

Proviso. Lands of actual settlers at the time excepted.

When grant to be in effect.

SEC. 3. That the relinquishment of the lands and the confirmation of the grant provided for in the second sections of this act are made and shall take effect whenever the Secretary of the Interior is notified that

Public Law 887

CHAPTER 843

AN ACT

August 1, 1956
[S. 3970]

To provide for the termination of Federal supervision over the property of the Wyandotte Tribe of Oklahoma and the individual members thereof, and for other purposes.

Wyandotte Tribe, Okla.
Termination of Federal supervision.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the purpose of this Act is to provide for the termination of Federal supervision over the trust and restricted property of the Wyandotte Tribe of Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians.

Definitions.

SEC. 2. For the purposes of this Act:

(a) "Tribe" means the Wyandotte Tribe of Oklahoma.

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" mean real property, interest therein, or improvement thereon, and include water rights.

(d) "Tribal property" means any real or personal property, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States.

Membership roll.

SEC. 3. The tribe shall have a period of six months from the date of this Act in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on the date of this Act, which shall be published in the Federal Register. The proposed roll shall be prepared in accordance with eligibility requirements prescribed in the tribe's constitution and bylaws. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of this Act.

Publication in FR.

Personal property rights.

SEC. 4. Upon publication in the Federal Register of the final roll as provided in section 3 of this Act, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 5 of this Act without the approval of the Secretary. Any contract made in violation of this section shall be null and void.

Transfer or distribution of property.

SEC. 5. (a) Upon the request of the tribe, the Secretary is authorized within three years from the date of this Act to transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary title to all or any part of the tribal property, or to transfer to one or more trustee designated by the tribe and approved by the Secretary title to all or any part of such property to be held in trust for management or liquidation purposes under such terms and conditions as may be specified by the tribe and approved by the Secretary, or to distribute pro rata among the members of the tribe all or any part of such property, or to sell all or any part of such property and make a pro rata distribution of the proceeds of sale among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution.

State's Exhibit 4

Trust agreement.

(b) Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided*, That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement: *Provided further*, That the trust agreement shall provide that at any time before the sale of tribal property by the trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of subsection (a) of this section, and that the trustees shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

Burying ground, Kansas City, Kans. Sale or transfer.

(c) Title to the tract of land in Kansas City, Kansas, that was reserved for a public burying ground under article 2 of the treaty dated January 31, 1855 (10 Stat. 1159), with the Wyandotte Tribe of Indians shall be transferred or sold in accordance with subsections (a) and (b) of this section, and the proceeds from any sale of the land may be used to remove and reinter the remains of persons who are buried there, to move any monuments now located on the graves, and to erect at reasonable cost one appropriate monument dedicated to the memory of the departed members of the Wyandotte Tribe: *Provided*, That if S. 1335 or comparable legislation is enacted by the Eighty-fourth Congress, any sale or transfer of such land shall be deferred until three months after the report required by such legislation has been submitted to Congress, during which time Congress shall decide whether to provide for the sale or disposition of the land on the basis of such report.

Compensation of agents, etc.

(d) The Secretary shall not approve any form of organization pursuant to subsection (a) of this section that provides for the transfer of stock or an undivided share in corporate assets as compensation for the services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary.

Selection of trustees.

(e) When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, the Secretary shall give due regard to the laws of the State of Oklahoma that relate to the selection of trustees.

Transfer of members.

SEC. 6. (a) The Secretary is authorized and directed to transfer within three years after the date of this Act to each member of the tribe unrestricted title to funds or other personal property held in trust for such member by the United States.

Removal of restrictions.

(b) All restrictions on the sale or encumbrance by the owners of trust or restricted lands that were originally allotted to persons who were at the time of allotment members of the tribe, regardless of whether such owners are themselves members of such tribe, and all restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor), regardless of where the land is located, are hereby removed three years after the date of this Act and the patents or deeds under which titles are then held shall pass the titles in fee simple subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance three years or more after the date of this Act shall vest in such members in fee simple, subject to any valid encumbrance.

State's Exhibit 4

Partition or sale before removal of restrictions.

(c) Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of the tribe, the Secretary may—

(1) upon request of any of the owners made within two years after the date of this Act, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted three years from the date of this Act;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof, and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

Probate, etc. 25 USC 372 et seq.

SEC. 7. (a) The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribe who die six months or more after the date of this Act.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months or more after the date of this Act.

Tax exemption.

SEC. 8. No property distributed under the provisions of this Act shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

Appointment of guardians.

SEC. 9. Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of this Act, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate.

Advances of funds.

SEC. 10. Pending the completion of the property dispositions provided for in this Act, the funds now on deposit or hereafter deposited in the Treasury of the United States to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary.

Execution of patents, etc.

SEC. 11. The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of this Act, or to establish a marketable and recordable title to any property disposed of pursuant to this Act.

Prior leases, etc.

SEC. 12. Nothing in this Act shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property sub-

Transfer of functions.

State's Exhibit 4

ject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency, or to a State agency with the consent of such agency and the other party or parties to such instrument.

Termination proclamation. Publication in FR.

SEC. 13. (a) Upon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

Citizenship.

(b) Nothing in this Act shall affect the status of the members of the tribe as citizens of the United States.

Educational program.

(c) Prior to the issuance of a proclamation in accordance with the provisions of this section, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or persons. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Revocation of charter. 25 USC 501-509.

SEC. 14. (a) Effective on the date of the proclamation provided for in section 13 of this Act, the corporate charter issued pursuant to the Act of June 26, 1936 (49 Stat. 1967), as amended, to the Wyandotte Tribe of Oklahoma and ratified by the tribe on July 24, 1937, is hereby revoked.

Termination of powers.

(b) Effective on the date of the proclamation provided for in section 13 of this Act, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are hereby terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this Act are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this Act without the participation of the Secretary or other officer of the United States.

Claims.

SEC. 15. Nothing in this Act shall affect any claims heretofore filed against the United States by the tribe.

Water rights.

SEC. 16. Nothing in this Act shall abrogate any water rights of a tribe or its members.

Rules and regulations.

SEC. 17. The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this Act and may in his discretion provide for tribal referendums on matters pertaining to management or disposition of tribal assets.

Repeals. 25 USC 501-509.

SEC. 18. All Acts or parts of Acts inconsistent with this Act are hereby repealed insofar as they affect the tribe or its members. The Act of June 26, 1936 (49 Stat. 1967), and the Act of June 18, 1934

(48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), shall not apply to the tribe and its members after the date of the proclamation provided for in section 3 of this Act. 25 USC 461-479.

SEC. 19. If any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. Separability.

Approved August 1, 1956.

Public Law 888

CHAPTER 844

AN ACT

August 1, 1956
[S. 1873]

To increase the minimum postal savings deposit, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Act of June 25, 1910, as amended (39 U. S. C. 756), is hereby further amended by striking out "$1" wherever it appears therein, and by inserting in lieu thereof "$5". 53 Stat. 1121.

Approved August 1, 1956.

Public Law 889

CHAPTER 845

AN ACT

August 1, 1956
[S. 3998]

To provide for the development of the Federal fish hatchery, known as the Holden trout hatchery, at Pittsford, Vermont.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall develop, reconstruct, equip, operate, and maintain the Federal fish hatchery, known as the Holden trout hatchery, at Pittsford, Vermont, in accordance with the program established by the Fish and Wildlife Service, Department of the Interior, for the improvement of such hatchery. Holden trout hatchery, Pittsford, Vt.

SEC. 2. There is authorized to be appropriated the sum of $220,000 to carry out the provisions of this Act. Appropriation.

Approved August 1, 1956.

Public Law 890

CHAPTER 846

JOINT RESOLUTION

August 1, 1956
[H. J. Res. 613]

To authorize the vessel operations revolving fund of the Department of Commerce to be used for expenses in connection with the chartering of merchant ships under jurisdiction of the Secretary of Commerce.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vessel operations revolving fund created by the Third Supplemental Appropriations Act, 1951, approved June 2, 1951 (Public Law 45, Eighty-second Congress; 65 Stat. 52, at 59), shall, beginning July 1, 1956, be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary of Commerce. There shall be credited to such fund all receipts on account of operations after July 1, 1956, under charters of Government-owned ships under the jurisdiction of the Secretary of Commerce. Vessel operations revolving fund.

Approved August 1, 1956.

State's Exhibit 4

PL 95–281, May 15, 1978, 92 Stat 246

UNITED STATES PUBLIC LAWS

95th Congress - Second Session

Convening January 19, 1978

DATA SUPPLIED BY THE U.S. DEPARTMENT OF JUSTICE. (SEE SCOPE)

Additions and Deletions are not identified in this document.

PL 95–281 (S 661)

May 15, 1978

An Act to reinstate the Modoc, wyandotte, Peoria, and Ottawa Indian Tribes of oklahoma as federally supervised and recognized Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) // 25 USC 861 // Federal recongnition is hereby extened or confirmed with respect to the Wyandotte Indian Tribe of Oklahoma, the Ottawa Indian Tribe of Oklahoma, a and the Peoria Indian Tribe of Oklahoma, the provisions of the Acts repealed by subsection (b) of this section notwithstanding.

(b) The following Acts are hereby repealed:
(1) the Act of August 1 , 1956 (70 STAT.893; 25 U.S.C. 791—807), relating to the Wyandotte Tribe;
(2) the Act of August 2, 1956 (70 Stat. 937; 25 U.S.C. 821—826), relating to the Peoria Tribe; and
(3) the Act of August 3, 1956 (70 Stat. 963; 25 U.S.C. 841—853), relating to the Ottowa Tribe
(c) There are hereby reinstated all rights and privileges of each of the tribes described in subsection (a) of this section and their members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to the Act relaing to them which is repealed by subsection (b) of this section. Nothing contained in this Act shall diminish any rights or privileges enjoyed by each of such tribes or their members now or prior to enactment of such Act, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of thei Act.
(d) Except as specifically provided in this Act, nothing contained in this Act shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied.
Sec. 2 (a) (1) The Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe of Indians residing in Oklahoma and the provisions of the Act of June 26, 1936, as amended (49 Stat. 1967;

25 U.S.C. 501—509), // 25 USC 861a. // are hereby extended to such tribe and its members. The Secretary of the Interior shall promptly offer the said Modoc Tribe assistance to aid theim in organizing under section 3 of said Act of June 26, 1936 (25 U.S.C. 503).

(2) The provisions of the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564—564w), hereafter shall not apply to the Modoc Tribe Olkahoma or its members except for any right to tshare in the proceeds of any claim against the United States as provided in sections 6(c) and 21 of said Act, as amended (25 U.S.C. 564e and 564t).

(3) The Modoc Indian Tribe of Oklahoma shall consist of those Modoc Indians who are direct lineal descendants of those Modocs removed to Indian territory (now Oklahoma) in November 1873, and who did not return to Klamath, Oregon, pursuant to the Act of March 9, 1909 (35 Stat. 751), as determined by the Secretary of the Interior, and the descendants of such Indains who otherwise meet the membership requirements adopted by the tribe.

(b) The Secretary of the Interior shall promptly offer the Ottawa Tribe of Oklahoma and the Peoria Tribe of Oklahoma assistance to aid them in reorganizing under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503), which Act is re-extended to them and their members by this Act.

(c) The validity of the organization of the Wyandotte Indain Tribe of Oklahoma under section 3 of the Act of June 26, 1936 (49 Statute 1967; 25 U.S.C. 503), and the continued application of said Act to such tribe and its members is hereby confirmed.

Sec. 3. (a) it is hereby declared that enactment of this Act // 25 USC 861b // fulfills the requiremnts of the first proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), with respect to the Wyandotte Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Peoria Tribe of Oklahoma.

(b) It si hereby declared that the organization of the Modoc Tribe of Oklahoma as provided in sec. 3(a) of this Act shall fulfill the requirements of the second proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921).

(c) Promptly after organization of the Modoc Tribe of Oklahoma, the Secretary of the Interior shall publish a notice of such fact in the Federal Register including a statement that such organization completes fulfillment of the requirements of the provisos in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), and that the land described in section 1 of said Act is held in trust by the United States for the eight tribes named in said Act.

Sec. 4. // 25 USC 861c. // The Wyandotte, Ottawa, Peoria, and Modoc Tribes of Oklahoma and their members shall be entitled to participate in the programs and services provided by the United States to Indians because of thier status as Indians, including, but not limited to, those under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C.13), and for purposes of the Act of August 16, 1957 (71 Stat. 370; 42 U.S.C. 2005—2005 F). The members of such tribes shall be deemed to be Indains for which hospital and medical care was being provided by or at the expense of the Public Health Service on August 16, 1957.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95—1019 accompanying H.R. 2497 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 95—574 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Nov. 3, considered and passed Senate. Apr. 11, H.R. 2497 considered and passed House; passage vacated; S. 661 passed in lieu with amendment.
Vol. 124 (1978): May 2, Senate concurred in House amendment.

Approved May 15, 1978.

PL 95–281, 1978 S 661

End of Document

DEPARTMENT OF THE INTERIOR

REPORT

OF THE

COMMISSIONER OF INDIAN AFFAIRS

TO THE

SECRETARY OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1917

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

State's Exhibit 6

TABLE 5.—*Area of Indian lands June 30, 1917*—Continued.

States and reservations.	Number allotments.	Area, in acres.		
		Allotted.	Unallotted.	Total.
New York			87,677	87,677
Allegany			30,469	30,469
Cattaraugus			21,680	21,680
Oil Spring			640	640
Oneida			350	350
Onondaga			6,100	6,100
St. Regis			14,640	14,640
Tonawanda			7,549	7,549
Tuscarora			6,249	6,249
North Carolina: Qualla			63,211	63,211
North Dakota	8,380	2,005,320	100,000	2,105,320
Devils Lake (Fort Totten)	1,189	137,381		137,381
Fort Berthold	2,165	435,708	100,000	535,708
Standing Rock	4,700	1,388,411		1,388,411
Turtle Mountain	326	43,820		43,820
Oklahoma	116,701	19,548,888	462,702	20,011,590
Cherokee	40,193	4,346,203		4,348,203
Chickasaw	10,955	3,800,350	721	3,801,071
Choctaw	26,723	4,291,036	458,937	4,749,973
Creek	18,710	2,997,114	2,495	2,999,609
Seminole	3,118	359,535	162	359,697
Cherokee Outlet	82	4,949		4,949
Cheyenne and Arapaho	3,331	528,789		528,789
Iowa (Sac and Fox)	108	8,605		8,605
Kansa (Kaw, now Ponca)	247	99,644		99,644
Kickapoo (Shawnee)	230	22,650		22,650
Kiowa, Comanche, and Apache	3,451	547,736		547,736
Modoc (Seneca)	68	3,966		3,966
Oakland (Ponca)	73	11,456		11,456
Osage	2,230	1,465,350		1,465,350
Otoe	514	128,351		128,351
Ottawa (Seneca)	160	12,995		12,995
Pawnee	820	112,701		112,701
Peoria (Seneca)	218	43,334		43,334
Ponca	792	100,745	387	101,132
Potawatomi (Shawnee)	2,109	291,736		291,736
Quapaw (Seneca)	245	50,245		50,245
Sac and Fox	548	87,684		87,684
Seneca	435	41,813		41,813
Shawnee	117	12,745		12,745
Wichita (Kiowa)	957	152,714		152,714
Wyandotte (Seneca)	244	20,942		20,942
Oregon	4,253	508,657	1,209,349	1,718,006
Grande Ronde (Siletz)	269	32,983		32,983
Klamath	1,351	208,279	812,707	1,020,986
Siletz	551	44,459		44,459
Umatilla	1,115	82,644	74,130	156,774
Warm Springs	967	140,202	322,512	462,804
South Dakota	26,989	6,190,527	503,010	6,693,537
Cheyenne River	3,493	961,685	249,145	1,210,830
Crow Creek and Old Winnebago	1,460	272,560	16,345	288,905
Lake Traverse (Sisseton)	2,006	308,838		308,838
Lower Brule	868	201,991	37,520	239,511
Pine Ridge	8,062	2,325,378	200,000	2,525,378
Rosebud	8,487	1,851,812		1,851,812
Yankton	2,613	268,263		268,263
Utah	1,337	111,947	1,510,800	1,622,747
Goshute and Deep Creek			34,500	34,500
Navajo (see Arizona and New Mexico)			600,000	600,000
Paiute (Navajo)			600,000	600,000
Shivwits			26,880	26,880
Skull Valley			80	80
Uintah Valley	777	39,620	249,340	288,960
Uncompahgre	560	72,327		72,327

State's Exhibit 6

53D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. 1, Part 5.

REPORT

OF THE

SECRETARY OF THE INTERIOR;

BEING PART OF

THE MESSAGE AND DOCUMENTS

COMMUNICATED TO THE

TWO HOUSES OF CONGRESS

AT THE

BEGINNING OF THE SECOND SESSION OF THE FIFTY-THIRD CONGRESS.

IN FIVE VOLUMES.

VOLUME II.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1893.

REPORTS OF AGENTS IN INDIAN TERRITORY.

REPORT OF QUAPAW AGENCY.

QUAPAW AGENCY, IND. T.,
August 21, 1893.

SIR: In compliance with Department regulations, and the printed circular of your office, I have the honor to submit this my fourth annual report of this agency.

Location.—This agency is situated in the northeast corner of the Indian Territory, and the following carefully-prepared table will furnish valuable information:

Tribes.	Area of reservation.	Number of acres tillable.	Number of acres in cultivation.	Number of acres under fence.
Senecas	51,058	16,000	10,500	14,000
Wyandotts	21,406	10,000	7,500	8,000
Eastern Shawnees	13,048	8,000	5,000	8,500
Ottawas	14,660	9,500	6,000	11,000
Modocs	4,040	3,000	800	3,500
Peorias	33,218	24,500	16,000	24,000
Quapaws	56,685	40,000	10,000	42,000
Miamis	17,083	16,000	13,000	17,000
Total	212,298	127,000	68,800	128,000

Progress and civilization.—All of the Indians of this agency are living in severalty, and are law abiding and progressive. They are all self-supporting, except 12 old Modocs, who draw rations. Special attention is called to the following statistics:

Tribes.	Population.	Number who can read.	School children between 6 and 18.	Number who have taken allotments.
Senecas	281	140	106	301
Wyandotts	310	215	96	241
Eastern Shawnees	83	45	35	84
Ottawas	156	74	58	157
Modocs	57	28	13	84
Peorias	170	102	51	153
Quapaws	216	99	66	*214
Miamis	82	65	23	66
Total	1,355	758	448	1,300

* Under act of Quapaw council of March 23, 1893.

Sanitary.—There has been a slight increase of the Indian population of this agency the past year. Scrofula and tuberculosis, that have prevailed so extensively in previous years, have been more generous in their dealings with those predisposed to those maladies, and as a result the number of births exceeds the deaths. The superstition of the "medicine man" and his practices are things of the past, and those who were once his followers are the strongest advocates of the agency physician and his methods of treating diseases.

Schools.—Contrary to my recommendations the Department closed the three day schools of this agency; hence the Seneca, Shawnee, and Wyandotte boarding school and the Quapaw boarding school only were open during the fiscal year 1893. Both of these schools are beautifully situated and the accommodations are good. The health and enrollment of these schools have been excellent and the pupils have advanced rapidly in their studies. I herewith inclose a report from each of the superintendents of these schools. The statistics give the following result:

	Capacity of the school.	Enrollment during the year.	Average attendance.	Buildings.
Seneca, etc	150	164	114	15
Quapaw	110	146	97	15
Total	260	310	211	30

ANNUAL REPORTS

OF THE

DEPARTMENT OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1903.

INDIAN AFFAIRS.

PART I.

REPORT OF THE COMMISSIONER,

AND

APPENDIXES.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1904.

Location.—This reservation is embraced within the counties of Nez Percé, Shoshone, and Idaho, the principal part being in Nez Perce County. The school is located on the Culdesac Branch of the Northern Pacific Railroad, 4 miles from North Lapwai, a station on the Palouse Branch of the Northern Pacific. There is a daily train service on this branch, but as it is an early morning train passengers coming to the school are obliged to drive from North Lapwai.

The reservation is traversed by the Clearwater River a distance of 85 miles. This stream is fed by a number of small streams at various points along its course. The river and its branches are located in valleys ranging from one-quarter to 2 miles in width. In these valleys the Indians live, farming small tracts of land. The allotments are located principally on the plateaus which surround these valleys.

The school is well located in the Lapwai Valley, with an abundance of good water for the school and for irrigating purposes. The agency was moved to the school in May, 1902.

Buildings.—The school plant consists of 14 buildings, located on a 20-acre campus. The large buildings are in a fair state of repair, much work having been done on them during the past year. A great deal of work should be done on them yet in order to make them convenient and homelike.

Agriculture.—There are 1,200 acres in the school farm, about 80 acres of which is in cultivation, the remainder being located on the hillside, and is used for pasture. The soil is fertile. An abundance of vegetables and fruit were produced on the place to supply the school during the school year. About 2,000 gallons of tomatoes, plums, prunes, and appples were canned for the pupils.

The past season has been one of unusual prosperity for both the Indians and white renters. Many of the Nez Percé Indians are inclined to till the soil, and in some instances have very creditable looking ranches. There are those among them, however, who farm a little in order to obtain permission to rent a portion of their holdings.

Leasing.—There is a great demand for leases on this reservation. Indians who are progressive and have more land than they can farm are allowed to lease a part of it. The regulations governing the execution of these leases are adhered to, and yet the number of leases is increasing. The annual collection for the present year derived from the leasing of land is estimated at $50,000, with additional rents in improvements on allotments of about $20,000.

Education.—There are two schools on this reservation—the Fort Lapwai Boarding School and the Catholic Mission School. Many of the pupils were away in the mountains with their parents and were late entering school in the fall. The enrollment at this school for the year was 172. Interest on the part of the teachers and pupils was good, and progress noted during the entire school year.

Health.—With the exception of an epidemic of diphtheria at the girls' building during the winter, from which no deaths were recorded, the general health of the school was good.

Liquor.—This reservation is dotted with towns, and in each one may be found designing white people who in every possible way try to evade the liquor law. At every session of the United States district court offenders are tried and sentenced, yet it is not possible to mete out justice to all, as the necessary proof of guilt in every instance can not be had.

Employees.—The employees are reliable, efficient, and willing workers.

Needs.—A good bath system and a more extended water system.

I am, very respectfully,

E. T. McARTHUR, *Superintendent.*

The COMMISSIONER OF INDIAN AFFAIRS.

REPORTS CONCERNING INDIANS IN INDIAN TERRITORY.

REPORT OF SCHOOL SUPERINTENDENT IN CHARGE OF QUAPAW AGENCY.

SENECA INDIAN TRAINING SCHOOL,
QUAPAW AGENCY, IND. T.,
Wyandotte, Ind. T., September 1, 1903.

SIR: I have the honor to submit herewith my annual report as superintendent in charge of the Quapaw Agency and the Seneca Indian Training School.

Agency.—Agency affairs mainly consist in the supervision of the sale of inherited Indian lands under rules and regulations promulgated by the Secretary of the Interior under date of October 4, 1902. At the close of the last fiscal year 67 peti-

tions, covering as many different tracts of land, had been received from heirs of deceased allottees of this agency asking for the sale of Indian lands. These "inherited lands" petitioned to be sold embrace over 5,700 acres. Of the 67 petitions above mentioned, 20 have resulted in deeds of conveyance properly approved by the Secretary of the Interior through the regular channels. Nine of the tracts listed for sale received no bids, two were withdrawn from sale on account of errors in the petition, three were relisted on account of the bids received being below the appraised value, one deed made under the rules was disapproved by the Secretary, and the remaining 32 petitions, or deeds made in consequence (as the case may be), are yet awaiting action in this office or the Department.

There have also been received 20 deeds for lands, sold by Peoria and Miami Indians under special act of Congress permitting them to sell a portion of their allotments. Of these 15 have been approved, 1 disapproved, and 4 are awaiting proper action.

During the past year the treaty and trust funds of the Seneca and Eastern Shawnee Indians, amounting for both tribes to nearly $152,000, and which were capitalized by Congress during its previous session, have been disbursed per capita to the individual members of these tribes by Special Indian Agent D. W. Manchester and myself. Of these funds the Senecas received $346.49 and the Eastern Shawnees $286.45 per capita.

Under date of May 27, 1902, Congress ratified and confirmed certain acts of the Seneca and Eastern Shawnee Indians, providing for the allotment, out of their surplus or tribal lands, of 120 acres to each minor child belonging to these tribes who had no allotment (having been born since the first allotment to the tribes), and for the sale of the remainder of the tribal lands. Under this act the Senecas allotted to 134 children and sold some 10,000 acres of surplus land. The Eastern Shawnee made allotments to 33 minors and sold 405 acres remaining after the allotment.

The lands sold by the Eastern Shawnee included 160 acres and the buildings located thereon heretofore used for agency purposes. Thus passed into history the "Quapaw Agency." These matters have been made the subjects of special reports to your Office.

Under an act of Congress, approved March 3, 1903, "the principal chief of the Quapaw tribe, with the consent of the tribal council, may sell the surplus tract of 160 acres heretofore set apart for school purposes." As far as I know these lands have not been sold under the provisions of that act. However, it is worthy of notice that the acts of Congress mentioned, providing for the sale of surplus or tribal lands, make no provision for the supervision of the sale by the Secretary of the Interior or the Commissioner of Indian Affairs, but give full power and authority to the tribes to dispose of their lands through their respective chiefs and council.

By authority of an act of Congress approved May 27, 1902, the Secretary of the Interior sold during the past year, after advertising for sealed bids, the tribal lands of the Peoria and Miami Indians, amounting to 6,323 acres for about $42,000.

The Wyandot and Ottawa tribes are the only ones of this agency who now have surplus or tribal lands, the Wyandot having 535 acres and the Ottawa 1,587 acres.

The following tables show the Indian population of the various reservations comprising this agency, the number of allotments in each tribe, etc.:

	Wyandot.	Seneca.	Quapaw.	Peoria.	Miami.	Ottawa.	Eastern Shawnee.	Modoc.	Total.
Number of allotments	241	436	247	153	65	157	117	68	1,484
Acres in each allotment	80	80 / 120	240	200	200	80	80 / 120	48	.....
Acres allotted	20,695	41,956	56,245	30,460	12,982	12,714	12,677	3,976	191,705
Unallotted or tribal lands	535	.....	.....	.....	.....	1,587	.....	24	2,146
Population:									
1902	354	351	271	185	110	167	100	47	1,585
1903	360	358	272	191	119	170	98	51	1,619
Population, 1903:									
Males	166	162	127	92	55	99	44	24	769
Females	194	196	145	99	64	71	54	27	850
Males over 18	102	81	58	41	18	52	20	17	389
Females over 14	133	109	79	51	39	42	31	15	499
Children between 6 and 16	90	78	81	69	38	60	35	8	459

School.—The average attendance for the year was 137. Owing to various causes, mainly the prevalence of measles, which became epidemic in the agency, the attendance was not as large as the previous year. At the beginning of the school year over

30 children of this agency, most of whom were pupils of this school, were transferred to bonded Indian schools.

As nearly as practicable the Course of Study has been followed in both schoolroom and industrial work. Classes in carpentry, cooking, and needlework have been added to the curriculum during the past year with marked success. The individual gardens of the pupils were an improvement over those of former years. The school has raised and sold during the past year 9 head of cattle and 34 head of hogs; besides, 16 head of hogs have been slaughtered for school use.

Notwithstanding the existence of much sickness in the neighborhood, the general health of the school has been excellent.

The school is blessed with an efficient and willing corps of employees who have worked in harmony. In fact, the school has had a very successful year, and for this no small credit is due the pupils, who have evinced a desire to make the most of their opportunities, and have seemingly appreciated the efforts made to promote their moral, mental, and physical welfare.

Very respectfully,

HORACE B. DURANT,
Superintendent and Special Disbursing Agent.

The COMMISSIONER OF INDIAN AFFAIRS.

REPORT OF AGENT FOR UNION AGENCY.

MUSKOGEE, IND. T., *August 12, 1903.*

SIR: In compliance with instructions, I have the honor to submit herewith my annual report of the affairs at this agency for the fiscal year ended June 30, 1903.

The Union Agency has under its jurisdiction what are known as the Five Civilized Tribes of Indians, viz, Cherokee, Choctaw, Chickasaw, Creek, and Seminole, with headquarters at Muskogee, Ind. T., which town is located on the Missouri, Kansas and Texas and the Ozark and Cherokee Central railroads, the latter mentioned road having been recently purchased by the St. Louis and San Francisco Railroad Company.

The Indian population of the Indian Territory is about 70,000, with approximately 650,000 white people. The gradual extinction of tribal autonomy and the allotment of lands of the Five Civilized Tribes in severalty by the Commission to the Five Civilized Tribes, the segregation of town sites, and the general development of the Indian Territory have materially increased the population, and many new and thriving towns have and are constantly springing up.

The Indian Territory is divided into four judicial districts, with four judges, four marshals, and four district attorneys.

The courts of the Cherokee and the Creek nations have been entirely abolished by acts of Congress, and the courts of the Choctaw, Chickasaw, and Seminole nations are still in existence, but with very limited authority.

By agreements the tribal and political life of the Indian nations will expire in March, 1906.

For this reason, and the fact that the Commission to the Five Civilized Tribes will have completed its work by that time and the Indians placed upon allotments, it is thought that statehood will not be given to the Indian Territory until then.

Duties of the Indian agent.—In my annual report for the fiscal year ended June 30, 1902, brief reference was made to the duties of the Indian agent at this agency. As stated, in addition to regulating trade and intercourse between the Indians and whites, the agent is required, by act of Congress approved June 28, 1898 (30 Stat., 495), to collect the royalty on all coal and asphalt mined in Choctaw and Chickasaw nations, and to collect the royalty on all timber and stone removed from any of the lands of the Five Civilized Tribes in Indian Territory, except the Creek Nation.

In the Creek and Cherokee nations the agent collects the royalty on all coal mined, and also collects the tax from all noncitizen traders residing and doing business in said nations, and collects all hay, ferry, and other royalties and permit taxes.

The agent is also charged with the duty of receiving payments on all town lots in Indian Territory and paying all warrants drawn by the principal chiefs of the Creek and Cherokee nations and all Chickasaw school-fund warrants.

One of the most arduous and difficult duties that the agent has to contend with is that of placing allottees in unrestricted possession of their allotments and removing therefrom objectionable persons. In the recent agreements made with the Cherokee, Creek, Choctaw, and Chickasaw nations a clause therein places this duty upon the