

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONONDAGA NATION,

Plaintiff,

v.

Civil Action No. 05-CV-314
(LEK/DRH)

THE STATE OF NEW YORK, *et al.*,

Defendants.

**DECLARATION OF J. DAVID LEHMAN
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

J. DAVID LEHMAN, declares under penalty of perjury as follows:

1. I reside in Los Angeles, California where I am employed as an Associate Professor of History at Long Beach City College, teaching courses in Early American history. I am a professional historian, having received my historical training at the University of California, Los Angeles (UCLA), where I earned a Ph. D. in History in 1992.

2. I have engaged in historical research and writing relating to the history of the Six Nations Confederacy in the Revolutionary and Early National periods since 1978. I was employed by the Indian Law Resource Center in Washington, D.C. as a researcher from 1978 to 1981. Since 2005 I have served as a research consultant to the Indian Law Resource Center in connection to their representation of the Onondaga Nation in its land rights lawsuit against the State of New York. Although my fields of study and research are not confined to Native American history, I have acquired a personal knowledge of, and familiarity with the historical primary sources and scholarly literature relating to the Six Nations Confederacy in the late 18th and early 19th centuries, particularly in regard to the land cession treaties with the State of New

York. My research has been published in a peer-reviewed scholarly journal and has been cited by other scholars in the field.

3. I make the following declaration based on historical research that I have personally conducted in libraries and archives located throughout the nation. The methods I have used to compile this statement conform to the historical practices that are ordinarily and customarily used by scholars in the field.

Introduction

4. In a span of seven years between 1788 and 1795, the State of New York took control of the vast majority the lands of the Onondaga Nation in a series of land cession treaties. None of these treaties was ever ratified or approved by the Onondaga Nation itself, by the Grand Council of the Six Nations, or by the United States government. These treaties reveal a pattern of fraud and deception on the part of New York State. Not only were Indian participants in the treaties repeatedly misled during negotiations, but also the majority of the Onondaga Nation denied that those participants had any authority to sell Onondaga lands. By 1795 the traditional homeland of the Onondagas had been reduced from an estimated 2,500,000 acres to a tiny reservation of only 7,100 acres. The area of this reservation was further reduced to its present 6,900 acres in two subsequent treaties in 1817 and 1822. In return for the lands “sold” at these treaties between 1788 and 1822, the Onondagas received \$33,380 in cash, \$1,000 in clothing, and an annuity of \$2,430 and 150 bushels of salt. [The New York State land treaties with the Onondagas are compiled in New York State Assembly, *Report of the Special Committee Appointed by the Assembly of 1888 to Investigate the “Indian Problem” of the State*, (Albany, 1889), vol. 1, pp. 190-211.]

The Six Nations and the Onondaga Nation repeatedly denied the validity of the Treaty of Fort Schuyler, 1788 to both United States and New York State officials

5. On September 12, 1788, officials of New York State and various Onondaga Indians signed the so-called Treaty of Fort Schuyler. By this treaty, the Onondaga Nation

purportedly ceded all of its lands to the State, retaining only a reservation of 100 square miles around Onondaga Lake. From the time that this treaty first became known, its validity was denied by the Grand Council of the Six Nations Confederacy and by the Onondaga Nation. Even prior to the treaty council at Fort Schuyler, New York officials had been notified that the proper chiefs would not be in attendance and that the chiefs had promised federal officials that they would attend congressionally-sanctioned councils. In the following document, dated May 14, 1788, the Six Nations chiefs refer to the deception practiced on them by the infamous “Livingston Lease” of 1787 and the Grand Council’s resolve to attend only those meetings authorized by Congress:

They [the representatives of the New York Genesee Company] told us they were sent by the Congress, otherwise we should not have taken the least Notice of their Message, as we had already promised Congress not to attend any Council but what should be called by their Authority.

Source: Message from the Six Nations Council to Governor George Clinton, May 14, 1788, from Franklin B. Hough, *Proceedings of the Commissioners of Indian Affairs* . . . , Albany: Joel Munsell, 1861, 2 volumes, p. 148. (Exhibit A)

6. In a message dated July 9, 1788, the Six Nations chiefs informed Governor Clinton that they would not attend the state treaty at Fort Schuyler because the Continental Congress had requested them to attend a federal treaty in the Ohio country.

Brother: You sent us an Invitation to meet you at Fort Schuyler, which Belt we return. We are unable to meet you at the Place you propose this Year as Business of the utmost Importance to the Indian Nations calls our immediate Attendance on the Treaty now held on the Ohio River, for which Place we are now setting out. Brother, this is all we have to say.

Source: Message from the Six Nations Council to Governor George Clinton, July 9, 1788, from Hough, *Proceedings of the Commissioners*, pp. 166-167. (Exhibit B)

7. June 2, 1789—In their first official response to news that the state had negotiated separate land cession treaties with the Onondagas, Oneidas, and Cayugas, the Six Nations chiefs denied their validity in a message to Governor Clinton, asserting that the State of New York conducted the negotiations with unauthorized individuals, at an improper location, and without the consent or knowledge of the chiefs. They further declared that only the Six Nations Grand Council, meeting at the Council Fire of the Confederacy at Buffalo Creek, could dispose of Six Nations lands.

Brothers: We have been informed of the Purchases you made of some of our young Men, both of the Onondaga and Kayuga Country, and we have considered long and seriously on the Consequences that may arise from suffering Individuals (without Authority) to dispose of Property that was given by the Great Spirit to our Forefathers and handed down by them to their Children the Five Nations in general. We have not been hard with the white People who has made an open and fair Application for Lands at our Council Fire; but we have accommodated them, and we hold the Sales sacred, because it was done in full Council and at a proper Place; but what is partially purchased from Individuals, at improper Places, we are bound by the ancient Customs of our Forefathers to disapprove of.

Brothers: We did not expect you, after advising us to shun private Treaties with Individuals and avoid selling our Lands to your disobedient Children, that you would yourself purchase Lands from a few of our wrong headed young Men, without the Consent or even the Knowledge of the Chiefs; therefore we have at present only to communicate our Disapprobation of those Sales . . .

Buffaloe Creek, 2nd June, 1789

Sharongyowanon
Kakondenayen, in Behalf of the Onondaga Nation
Ojageghte
Oghniokwenton, in Behalf of the Cayuga Nation
Oghnenrayewaghs
Skentyoghkevadoogh, in Behalf of the Seneca Nation
Jos: Brant or Tekenaweter, in Behalf of the Mohawks &c.

Source: Message from Six Nations Council to Governor George Clinton, June 2, 1789, Hough, ed., *Proceedings of the Commissioners*, pp. 331-332. (Exhibit C)

8. At the time of the making of the Treaty of Fort Schuyler, of those Onondaga Indians living within the boundaries of the United States, a substantial majority lived in western New York, either at the Onondaga village at Buffalo Creek or along the Genesee River. Most Onondagas had fled their homes during the Revolutionary War, especially after the destruction of their village along Onondaga Creek by American forces in 1779. The Onondaga Chiefs' Council, with the nation's wampum and historical records, was established at a new council house in the new village at Buffalo Creek. As of 1788 only a small portion had returned to their traditional homeland at Old Onondaga. It was members of this latter group that signed the New York State treaty at Fort Schuyler. The missionary Samuel Kirkland, who traveled from one end of Six Nations territory to the other in 1788-1789, compiled a census of the Six Nations for the year 1789. He recorded 339 Onondagas living at Buffalo Creek, 34 at Genesee, and 68 at Old Onondaga. Source: Kirkland Census of the Six Nations, Samuel Kirkland Papers, Hamilton College, Hamilton, N.Y. A transcript of this census is located in the collections of the American Philosophical Society, Philadelphia. (Exhibit D)

9. On June 2, 1789, the same date of the previous message to Governor Clinton, the Six Nations Council officially informed the new federal government of this threat to its land rights. In a message addressed to President George Washington, the Six Nations protested the state treaty and denied its validity. The Six Nations Council insisted that the Council fire at Buffalo Creek (at the Onondaga village) was the only legitimate place at which to conclude a land cession treaty. Although the chiefs appear to act on their understanding that the national government had an obligation to assist them, there does not appear to have been a response to this message from either President Washington or Secretary of War Henry Knox.

We feel ourselves injured by the Number of Council Fires which your people have kindled at Different places to do Business with us, it has always been the

Custom with our Forefathers to have one Great Council fire kept Burning and there to do all public Business which respected the five Nations in General [.] The King our father had also one Great Council fire to which we resorted when we had any important Matter to Communicate. [A]t Buffalo Creek ours has long been Established, & still Continues, and there we hold and mean to hold all Treaties in which the General Consultation of the Five Nations is required and what is done there in public council we hold Sacred and shall always adhere to Strictly.

The Governor of New York addressed us in a speech dated the 18th of May, 1788, inviting us to attend at Fort Schuyler, on the 10th Day of July on Business of importance to our Mutual Happiness at the same time warned us against holding private Treaties with the Disobedient Children of the States, Contrary to the Good old rule and customs which had always been observed between Your Forefathers and ours, and advised us not to let them Settle on the Land which they had obtained a Lease of the fall before, from [some?] of our Chiefs only.

Prior to the receipt of the Governors letter we received a Letter from Your Commissioners to attend a Treaty to be held at Tuskarowas where we were then preparing to go. Soon after our Departure from Home another Message arrived in our Villages informing that the Treaty was to be held in the fall at Fort Schuyler and requesting our Chiefs to attend. The Governor was then informed that our Chiefs were gone to the Southward on Public Business and could not attend till their Return. Notwithstanding which the Governor contrary to the principles of his advice to us (at the instigation of a Couple of Traders residing in our Villages) assembled two Sachems one Chief Warrior, and a few Young men & women & made a partial purchase of the whole of the Onondaga Country. . . . This we looked upon as Fraudulent means of possessing our Country, without paying the Value or any part thereof, for the good of the Nations in General to whom the Lands belong. . . .

[W]hat has been sold since to the Governor by our Young men and wrong headed people contrary to our ancient customs and in direct Contradiction to the Governor's own Language to us and not confirmed at our Great Council fire at Buffalo Creek, we can not confirm and we are convinced you will see the impropriety of his pretensions to settle his people upon such a Slender Title, and we presume You will approve of our determining to prevent any Surveys taking Place by Virtue of that purchase

Source: Letter to the President of the United States from the "Sachems, Chiefs, and Warriors of the Five Nations Assembled in Council" at Buffalo Creek, June 2, 1789, Draper Collection, Series U, vol. 23, pp. 164-169, microfilm copy available at UCLA, Young Research Library. (Exhibit E)

10. On July 30, 1789, Six Nations chiefs rejected Governor Clinton's explanation for the making of the Treaty of Fort Schuyler and once again denied its validity because it had been concluded with unauthorized individuals. This is perhaps the Six Nations' most strongly-worded condemnation of what they see as New York State's strategy to make land cession treaties with unauthorized individuals from individual nations. The message also implies a desire to unite the Six Nations at Buffalo Creek and to regard the state reservations further east as a "trap."

Brother: We have this Day received your Letter dated 14th Inst. in Answer to ours of 2nd June; we are very sorry you have paid so little Attention to it. We endeavoured to explain to you that you had not treated with the Chiefs, nor with persons authorized by them to dispose of our Country, but we are now sorry to find you do not wish to be convinced of an Error, which you took no previous Steps to avoid. You say the Treaties you entered into gave great Satisfaction to the Indians and would be much to their Advantage. Undoubtedly a large Sum of Money to a few Indians, *void of Principal*, would be pleasing, and their Ideas of Advantage are but momentary and never descend to Posterity, and they are too blind to see the Traps laid to disunite the Nations to which they belong. What you mean by offering your Assistance to see the Money fairly divided among those of their Nations who are entitled to receive it, we do not understand, unless you think none entitled to it but those who remain in the reserved *Trap* and who are intirely in your Power. Our Ancestors made no Distinction in a Nation; they held their Lands in common, and we do not wish to deviate from their Customs.

Brother: When you proposed a Treaty in July 1788, at Fort Stanwix, we informed you that we should be on Business to the Southward with the Commissioners of Congress; upon which you postponed it until September, and then we had not returned; nevertheless you proceeded to Business (you say) in full Council according to the Custom of *your* Ancestors, after the most serious and solemn Deliberations; true, it was the Custom of your Ancestors to do Business with ours in full Council, but it was not the Custom of our Ancestors to call a Council and treat on Business of Importance to their Nations and Posterity, without the Presence or Knowledge of the Chiefs, nor was it the Custom of yours to require it; therefore we now see clearly what we before had only a glimmering View of, and that your solemn Deliberations were the dictates of Policy and your Determination was to effect a Disunion, which would terminate in our Ruin.

Source: Hough, ed., *Proceedings of the Commissioners*, pp. 340-343. This letter to Clinton, dated July 30, 1789, was signed by 26 Six Nations chiefs and warriors, including five Onondaga chiefs from Buffalo Creek. (Exhibit F)

11. August 15, 1789—At Six Nations council meeting at Niagara, the “principal chiefs of the Onondagas, Cayugas, & Mohawks” complain about the New York strategy to divide and weaken the Confederacy by negotiating separate treaties with individual nations:

About this time [July, 1789] we received an Answer to a letter we had wrote to Governor Clinton but not a Satisfactory one for he still looks upon the Unjust Purchase he made from a few of our Young People to be good and Valid & says he is Determined to Hold it fast, and that if we hinder the Surveyors in their Business he will Look upon it as a Hostile Intention and that we mean to Quarrel with him. We now intend to warn the Governor again as we did before & to tell him that we see through his Artifice in reserving small tracts of Lands to the Indians by which he hopes to Divide and Weaken us, but this we will endeavour to prevent by Sending for our People who are there to Move off to us & we have sent Belts to the Surveyors not to proceed until this Matter is Settled to our Satisfaction.

Source: “Proceedings of a meeting of Onondagas, Cayugas, and Mohawks at Niagara,” August 15, 1789, Public Archives of Canada, RG 10, vol. 1834-1835, folios 365-367; also available in the 50-reel microfilm collection *Iroquois Indians: A Documentary History of the Diplomacy of the Six Nations and Their League*, (Woodbridge, Conn., Research Publications, 1984), reel 39. (Exhibit G)

12. February 25, 1791—In a letter to U.S. Indian Commissioner, Timothy Pickering, the Mohawk leader Joseph Brant condemns those who had acquired or attempted to acquire Six Nations lands by treating with “individuals” and “parties without the concurrence of the whole.” He claims that this strategy—to divide the Six Nations and acquire their land by holding councils with partial and unrepresentative groupings of Indian—had been followed since the end of the Revolutionary War and was intended to undermine the peace of the Confederacy.

Sir,

The law passed by Congress the 22nd July last, to regulate trade and intercourse with the Indian Nations, shews a desire in them to have justice done the Indians; that, with the assurances I have had of the good disposition of the President of the United States towards us, induces me to address you on the Subject.

The number of Council fires which has since the year 1784 been kindled in our Country has kept our heads in a state of intoxication—and although your present mode of treating with us [since Congressional passage of the Non-Intercourse Act] may prevent such abuses as have been practiced from being exercised in

future by your Citizens, yet if partial representations are still received from our people, I am afraid it will fail of effecting that happy end which our mutual interest requires. It is difficult for us to prevent individuals from addressing you with assumed power, which they have no right to; if such meet encouragement, harmony cannot be established with permanency. . . . Should individuals, or parties, without the concurrence of the whole, meet encouragements, the Five Nations cannot be happy amongst themselves; nor can that harmony subsist between them and their neighbours, as might be produced by a general representation of the causes of uneasiness where there is any, which has long been the united wish of the nations.

Source: Joseph Brant to Timothy Pickering, February 25, 1791, Pickering Papers, Massachusetts Historical Society, vol. 61, folio 197-199v; also in *Iroquois Indians: A Documentary History*, Reel 40. (Exhibit H)

13. July 17, 1792—Federal Indian Superintendent Israel Chapin reports to U.S.

Indian Commissioner Timothy Pickering that the Cayuga Indians have strongly protested the validity of land cession treaties to New York State. The Cayuga Nation faced circumstances similar to those confronted by the Onondagas. A majority of the Cayugas, including most of the chiefs and sachems, resided at Buffalo Creek, yet a small number of Cayugas living at Cayuga Lake had sold lands to the State of New York without the approval or participation of the rest of the Cayugas or the Six Nations Confederacy. Fish Carrier, who lived at Buffalo Creek, was the head chief and spokesman for the Cayugas. On occasion, the Buffalo Creek Onondagas requested him to act as their spokesman as well. (See, for example, Fish Carrier's speech to Israel Chapin, Sr., the U.S. Indian Superintendent to the Six Nations, October 12, 1793, ¶ 16 below.)

The Fish-Carrier and all the Cayugas residing at Buffalow Creek were highly disaffected and at my first arrival the treatment I received from them bordered on rudeness. Whether real or not they certainly feel like an injured people. Through the influence of our friends they held a council with me. They informed me that the Indian by the name of Steel-Trap was never considered as a chief of the Nation—that he only sold their Lands to the Commissioners of New York—he only received and squandered the money—that the five hundred dollars which the Governor of New York promised to pay the Nation annually had uniformly been paid to the Usurper Steel-Trap, and none of Chief or one Nation residing at

Buffalow Creek had received a farthing. That their Lands were now gone without their consent and without an equivalent and that they had not so much as a pipe of Tobacco to smoke with their friend.

Source: Israel Chapin, Sr., to Timothy Pickering, Canandaigua, July 17, 1792, from the Pickering Papers, vol. 62, fol. 58-59v. (Exhibit I)

14. April 21, 1794—In an official reply to a message from Secretary of War, Henry Knox, the Onondaga chief, Clear Sky, and the Mohawk leader, Joseph Brant, bitterly complain that while the Six Nations chiefs have devoted great effort to mediate a peace between the Western Confederacy of Indians in the Ohio country and the United States, federal officials had done nothing to stop the fraudulent land cession treaties that had diminished the Six Nations land base. Brant complains:

We have borne every thing patiently for this long time past; we have done every thing we could consistently do with the welfare of our nations in general—notwithstanding the many advantages that have been taken of us, by individuals making purchases from us, the Six Nations, whose fraudulent conduct towards us Congress never has taken notice of, nor in any wise seen us rectified, nor made our minds easy. This is the case to the present day; our patience is now entirely worn out . . .

Source: Proceedings of a council at Buffalo Creek, in reply to a message from Secretary of War Henry Knox, April 21, 1794—Answer introduced by Clear Sky and delivered by Joseph Brant, in the presence of Israel Chapin (U.S. Agent) and Colonel John Butler (British Agent), in *American State Papers: Indian Affairs*, I, 481. (Exhibit J)

The Onondaga Nation and the Six Nations Confederacy denied the validity of the Treaty of Onondaga, 1793

15. In late 1793, New York State Commissioners held treaty proceedings at Onondaga Village with the small portion of the nation that resided there. By this treaty, New York State gained control of approximately three-quarters of the Onondaga Reservation created by the Treaty of Fort Schuyler, 1788. In return, the Onondagas received \$410 and were

promised an annuity of \$410, payable each June 1st. As with the Treaty of Fort Schuyler, the Onondaga chiefs at Buffalo Creek explicitly and repeatedly repudiated the treaty.

16. October 12, 1793—When the Onondaga and Cayuga chiefs at Buffalo Creek received the message from Governor Clinton, calling for a treaty conference to be held in the fall of 1793, they immediately sent word that they would not attend and asked the Governor to re-schedule it for the following spring. Several of the leading chiefs had just returned from a months-long effort to broker a peace between the hostile Western Indian Confederacy in the Ohio Country and the United States. U.S. Indian Superintendent Israel Chapin relayed the message that the Buffalo Creek Onondagas and Cayugas would not be present, and gave his opinion that the proposed treaty negotiation should not be held as planned. [The act authorizing this treaty, passed by the New York State Legislature on March 11, 1793, had named Israel Chapin as one of the three commissioners to negotiate with the Onondagas, Cayugas, and Oneidas on behalf of the state, but Chapin would not be part of the Treaty of Onondaga, 1793. See *Laws of the State of New-York, Sixteenth Session, 1793*, chapter LI, pp. 73-74.]

Fish-carrier, Chief of the Cayuga Nation to Israel Chapin Esq., Superintendant of Indian affairs for the Northern Department, Buffaloe Creek, Oct. 12th, 1793

Brother: You informed us the other day that you and two other persons were appointed by the Governor as Commissioners to treat with us for the sale or lease of our Lands, and that a meeting was proposed to be held on the lands to be sold or leased this Fall.

Brother: You desired us to think of the matter and let you know when we would meet the Commissioners, and whether we would sell or lease our Lands.

Brother: The season is now far advanced, and Winter is near to us, which together with the great sickness, which prevails among us, makes it difficult for us to meet you this Fall.

Brother: We will meet you in the Spring, and we will either sell or lease our Land and let you know on what terms.

Source: New York State Archives, Legislative Assembly Papers (A-1823), vol. 40, pp. 297-298; also available in *Iroquois Indians: A Documentary History*, reel 42. (Exhibit K)

17. Despite this message, New York State Indian Commissioners choose to ignore the request for postponement from the head chiefs of the Onondagas and Cayugas. On February 10, 1794, the Onondaga and Cayuga Chiefs at Buffalo Creek informed U.S. Indian Superintendent Israel Chapin that they have learned that, contrary to their wishes and expectation, the state had made a treaty at Onondaga the previous November in which they had obtained a large land cession.

Brothers—When you came here to the council last fall, you told us that the Governor of the State of New York wanted to purchase our Lands, and that he had appointed Commissioners, to treat with us for them. After considering on the matter we told you, that as it was late in the season, and many of our men had gone out a-hunting, we wished to have the matter put off while Spring [sic], and we sent a message by you to the other Commissioners, to inform them of the same. As you was one of the Commissioners and our Superintendant, we made our minds easy, but we were greatly disappointed when we heard that some of our lands had been purchased without our consent, and our minds have been much distressed in consequence thereof.

Source: "Proceedings of a council at Buffaloe Creek," February 10, 1794, O'Reilly Papers, New-York Historical Society; also in *Iroquois Indians: A Documentary History*, Reel 42. (Exhibit L)

18. General Chapin answered that he had "delivered the message to the Commissioners which you gave me last fall, and informed them, that you wished to have business delayed while spring [sic], but notwithstanding they proceeded to purchase the land belonging to the Onondaga Nation." (*Ibid.*, Exhibit L)

19. March 4, 1794—The Onondaga and Cayuga chiefs, invited by Governor Clinton to meet with him in Albany, stopped along their way at the home of U.S. Superintendent to the Six Nations, General Israel Chapin, at Canandaigua, New York. The chiefs once again told Chapin that the state treaties with the Onondagas and Cayugas were invalid and that they

intended to tell Clinton that no sale could be considered binding unless it was concluded at the Six Nations council fire at Buffalo Creek. They also requested that Chapin accompany them to Albany. In this excerpt, the Onondaga chief, Clear Sky presents the Six Nations position:

We received the Governors message and was glad to hear it; as we wish to see the Governor and reveal our minds to him, as he has not before paid that attention to the principal chiefs which he ought, as he has been trading with but few of the Indians living at Cayuga and Onondago, which we consider as it were but children, with whom he has traded, which was not properly intitled to dispose of the lands, without our consent But has Generally Confirmed his bargains with these few and Neglected the principal Chiefs who are the proper owners of the Land. Brother, You recollect last fall we understood the Governor wished to purchase our Lands, but we declined meeting on account of the Winter Season being so near approaching and would not so well accommodate the business & desired it might be postponed until Spring. And we conceive the Governor has wished to trade with a few who reside on the Lands at Cayuga & Onondago, without Consulting the principal Chiefs, or proper owners, and we consider him as one who wishes to defraud us of our Land. . . .

Brother: I hope You have paid attention to what we have said. The council which must finally terminate this business, must be holden at Buffaloe Creek the place Determined to decide all such business, so that all the Chiefs and Six Nations may have a proper understanding of all that takes place, and as the aforesaid place is the place of our doing business, shall take the Governor by the Hand and invite him there. It is our Determination to persuade the Governor to rise from His Seat and come into our Country at Buffalo Creek, the place of our doing business, and there to determine the Terms of our Bargain, As we mean this meeting to be the last respecting the lands. Former purchases made by the Governor has much disturbed our minds, as he has traded with Boys, &c. in future we mean to have the Governor come forward into our Country and make his Bargains at Buffaloe Creek.

Source: New York State Archives, Legislative Assembly Papers, vol. 40, pp. 83-87; also in *Iroquois Indians: A Documentary History*, Reel 42. (Exhibit M)

20. In reply, Chapin acknowledged that the Onondagas and Cayugas had informed him that “it was not agreeable to your minds” to sell lands to the New York Commissioners; “I communicated this information to them but notwithstanding they proceeded and purchased that of the Onondagaes.” (Exhibit M)

21. March 17, 1794—Accompanied by Chapin, the Onondaga and Cayuga chiefs met with Governor Clinton in Albany in March, 1794. Here, they explicitly repudiated the treaty made at Onondaga in November, 1793, and told Clinton that only a treaty at the Six Nations council fire at Buffalo Creek could be valid. They asked Clinton to send commissioners to Buffalo Creek and stipulated that U.S. officials be present to “see justice done us.” In this excerpt, a spokesman identified as the Little Cayuga Chief speaks on behalf of the Onondagas:

Three agreements were made with some of your people in our General Council which you have annulled, because they did not get the consent of your government, but the Commissioners you sent last fall made an agreement with a few of the people that live on our land, and did not obtain the consent of our head men nor the voice of our nation. It is void and we bury it. . . .

Brother—you requested us to mention the time and place where you have wronged us and the particular Instances, as you consider yourself a Friend. We will tell you.

What we mean is that we wanted your Commissioners to postpone the business last Year as we were not ready. But they came on like Strong headed men and Treated with Boys at Onondago. The Annual payments are made to the Indians residing there also, who wrong the Majority of their [illegible]. When we speak of you we only mean the men you sent among us. We have buried the Bargain with the Onondagoes as well as those we made with your Young Men. We hope there will be a New Bargain made to the satisfaction of the Nation.

Source: “Proceedings of a Meeting between Governor George Clinton with the Cayugas and Onondagas from Buffalo Creek and Grand River,” March 13-17, 1794,” New York State Archives, Legislative Assembly Papers, vol. 40, pp. 225-242; also in *Documentary History*, Reel 42. (Exhibit N)

22. The spokesman made it clear that the Buffalo Creek Indians were not attempting to exclude the Onondagas and Cayugas living on the state reservations; “We shall invite the people that live on our reservations to attend the proposed Council at Buffaloe Creek. We called a Council at Onondaga and Cayuga on our way and told them of it.” Rather, they were seeking a comprehensive agreement with the state, negotiated with the proper Six Nations chiefs, in the presence of federal commissioners: “Let us forget what is past—let us have a new agreement

that will give general satisfaction.” The meeting ended in Albany with no confirmation of the state land cession Treaty of Onondaga, November 1793 and no agreement by the state to respond to the Onondaga and Cayuga demands.

The Six Nations believed that only a treaty made with the participation of the federal government is valid and they repeatedly called on federal officials and the President of the United States to investigate fraudulent purchases and assist them in the protection of their lands

23. Following the Revolutionary War, United States Commissioners informed the Six Nations at the Treaty of Fort Stanwix “that a treaty with an individual state without the sanction of Congress could be of no validity.” (Oliver Wolcott, Arthur Lee, and Richard Butler to the President of Congress, dated Fort Stanwix, October 5, 1784, *Papers of the Continental Congress*, item 56, folios 133-136; Exhibit O). There is evidence that the Six Nations took this injunction seriously, even before the passage of the Non-Intercourse Act in 1790. For example, in the spring of 1788, when Governor Clinton attempted to invite the Six Nations to a treaty at Fort Schuyler, the Six Nations chiefs responded that they had “promised Congress not to attend any Council but what should be called by their Authority” (Message of the Six Nations to Governor George Clinton, dated Buffalo Creek, May 14, 1788, in Hough, ed., *Proceedings of the Commissioners*, p. 148; see Exhibit A). The Six Nations later returned the belt inviting them to the state treaty, telling Clinton that “we are unable to meet you at the Place you propose this Year as Business of the utmost Importance to the Indian Nations calls our immediate Attention on the Treaty now held on the Ohio River.” (Joseph Brant, “In behalf of the Five Nations,” to Governor Clinton, July 9, 1788, in Hough, ed. *Proceedings of the Commissioners*, pp. 166-167; see Exhibit B). Brant is referring to the federal treaty with the Six Nations and other western Indian nations held at Fort Harmar.

24. During the spring and summer of 1788, as New York State, Oliver Phelps (holder of the “preemption right” to western New York), and John Livingston, instigator of the notorious “Livingston Lease,” all attempted to hold land cession treaties with various groups of Indians, the Six Nations complained to federal officials about the growing pressure on their land rights and called on the federal government to assist them. In May, 1788, the Six Nations chiefs held at council at Buffalo Creek, in which they repudiated “the Lease which Mr. Livingston and his Friends had taken from some of our young Men, contrary to the Resolutions and Speech from the whole of the Sachems and Chiefs of the Six Nations” and declared their intention to attend the federal treaty on the Ohio River where “we shall . . . expect every Assistance from the Deputies from Congress to assist us in our Grievances at that Meeting.” (Six Nations chiefs to Governor George Clinton, dated Buffaloe Creek, May 14, 1788, in Hough, ed., *Proceedings of the Commissioners*, p. 148; see Exhibit A).

25. When the Six Nations delegates arrived in the Ohio Country, they complained bitterly to Arthur St. Clair, Governor of the Northwest Territory, about the growing pressure for councils from men seeking to purchase their lands, including the pressure from New York. In this excerpt, Governor St. Clair reports to the following to Secretary of War, Henry Knox:

There is another reason why the Indians have been so tardy and undecided about their meeting which has been supplied by the Governor of New York. It may not be proper for me to animadvert on the conduct of that or any Government; but it surely was very improper to call the six nations to a meeting in that State, and as I have understood for State purposes at the very time they had been called to a different part of the country for general purposes, and in which that State as a member of the U.S. was equally concerned, and no meeting is of much consequence without these nations. It has distracted them very much—they complain of it and say “they are called here and they are called there—One says here is the great Council Fire and to this you must come—another tells them there is the great Council Fire and there they must go, and a third tells them it is lighted up in a third place (that I understand is the land company that has been formed in that State to take leases of them) and they know not which to do, or whom to believe, they feel themselves like drunken men reeling from side to side and

unable to fix themselves any where.” And as they are naturally, I had like to have said, not altogether unjustly, jealous of us, it has at this time increased that natural jealousy.

Source: Governor Arthur St. Clair to Secretary of War Henry Knox, dated Pittsburgh, July 5, 1788, Papers of the Continental Congress, item 50, vol. 3, folios 489-508; also in *Documentary History*, Reel 39. (Exhibit P)

26. In the spring of 1789, when state officials began arriving in Six Nations country, preparing to survey the lands that had purportedly been sold by the Oneidas, Onondagas, and Cayugas at Fort Schuyler and Albany, the previous year, the Six Nations council sent a lengthy message detailing the threat to their lands, and calling on the federal government to intervene in the controversy, investigate the circumstances, and assist the Indians in gaining redress. This message was an official communication, addressed “To the President of the United States,” sent by the “Sachems, Chiefs & Warriors of the Five Nations, assembled in Council at Buffaloe Creek,” dated June 2, 1789.

27. In this message, the Six Nations denied the validity of the Treaty of Fort Stanwix (see above) and in this excerpt, they call for the intervention of the federal government to protect their rights:

We, the Sachems, Chiefs, and Warriors of the Five Nations Assembled in Council at our Great Council Fire at Buffalo Creek congratulate You upon Your New System of Government, by which You have one Head to Rule, Who we can look to for redress in all disputes which have arose or which may arise between Your people and ours . . . We request You will attend to our Complaints. . . .

We feel ourselves injured by the Number of Council Fires which your people have kindled at Different places to do Business with us. . . . [There follows a detailed recitation of the events of the previous year, including a strongly-worded condemnation of the Treaty of Fort Schuyler which the message characterized as “a Fraudulent means of possessing our country” and purchased “from them who have no right to sell.”]

[W]e wish that in order to inform Yourselves fully of the Measures that have been taken, that You would send Commissioners to enquire into the Circumstances of these our Complaints, and take Peter Ryckman who is well acquainted with all these proceedings and who has himself been a principle instrument in Creating all the Mischief that has

been occasioned on both Sides, may also attend with them and when you have the Matter explained so that you perfectly understand it, We presume that all will be made right & that we will then be enabled to Convince you of the Sincerity and justice of our intentions by strictly adhering to all Public Treaties we engage in.

[The message is signed by seven Six Nations leaders, including the first two signers, Sharongyowanon (Clear Sky) and Kakondenayen “in Behalf of the Onondaga Nation.”]

Source: State Historical Society of Wisconsin, Draper Collection, Series U, vol. 23, folios 164-169; also in *Iroquois Indians: A Documentary History*, reel 39. (See Exhibit E)

28. Following this message to President Washington, the Six Nations chiefs informed Governor Clinton that they had formally request federal intervention to protect their rights against fraudulent state treaties. This formal message was signed by five “Onondaga chiefs from Buffalo Creek,” in addition to twenty-one other Six Nations leaders. The message strongly condemned the Treaty of Fort Schuyler, and concluded in the following manner:

We wrote Congress the same time [we] wrote you and requested that Commissioners might be sent either here or at our Council Fire at Buffaloe Creek to enquire into those Differences, that the Causes might be removed, and we are anxiously waiting their Answer. We hope that Congress will view our Situation impartially, and we presume the World can easily discern that it is not the Good of the State, but self Interest, that influences the Proceedings which most affect us. . . . It is hard for us to judge what are the Motives which influence your Proceedings; therefore we wish our Difference to be determined by Congress.

Source: Message to Governor George Clinton, July 30, 1789, in Hough, ed., *Proceedings of the Commissioners*, pp. 340-343. (See Exhibit F)

29. Between 1790 and 1792, the United States government sponsored three important councils with members of the Six Nations—at Tioga Point, November 1790, at Painted Post (Newtown Point), July 1791, and at Philadelphia, January 1792. The United States had a variety of goals in convening these meetings—to condole and make restitution for Indian victims of frontier violence, to inform the Six Nations of the newly-passed Trade and Intercourse Act of 1790, and, most importantly from the American perspective, to maintain peaceful relations with

the Six Nations at a time when the Western Confederacy—the Six Nations’ “nephews” in the Ohio Country—were in open armed conflict with the United States. These meetings provided the framework for the making of the most important United States-Six Nations treaty, the Treaty of Canandaigua, 1794. In this excerpt, the Oneida orator, Good Peter, speaking on behalf of the entire confederacy at the Painted Post conference, presses U.S. Commissioner Timothy Pickering for assurances that the U.S. will fulfill its engagements to protect Six Nations’ lands:

“You told us (said he) that the UStates were going to take measures to prevent our being cheated—that we might keep the seats we sat on till we should think fit to sell them. You told us that no sale of land without the knowledge of the President would be good. When we owned all this land, we did not think we had too much. Yet now we have but little. But ‘tis the mind of the Six Nations never to sell any more; but to keep it for our warriors for hunting ground forever: but ‘tis not our wish to break our seats and make them smaller. Now the UStates have engaged to make our seats easy, we only desire they would fulfill their engagements. We are willing to do the like. This will make the chain bright on both sides.”

Source: From Timothy Pickering’s notes at the Painted Post conference, July, 1791, Pickering Papers, vol. 60, folio 46. (Exhibit Q)

30. In March 1794, the Onondaga and Cayuga chiefs from Buffalo Creek made two explicit requests for federal assistance and involvement in their efforts to challenge the validity of the Treaty of Onondaga, 1793. At a conference in Canandaigua with U.S. Superintendent to the Six Nations, Israel Chapin, the Onondaga chief, Clear Sky requested Chapin to accompany the Indians to their meeting in Albany with Governor Clinton to voice their protest against the Treaty of Onondaga. “[A]s You being appointed to oversee Indian Affairs we look to you for advice and Desire you will go to Albany with us . . . we hope and believe that Justice will be done to us, and hope you will prevail with the Governor to come into our Country to settle the business.” (Speech of Clear Sky to Israel Chapin, March 4, 1794, New York State Archives, Legislative Assembly Papers, vol. 40; see Exhibit M). Chapin agreed to accompany the Onondagas and Cayugas to their meeting with the Governor.

31. On March 17, while speaking of the Six Nations' demand for a new state treaty to overturn the land cession treaties of 1793/94, the Six Nations' spokesman expressed the Indians' desire for U.S. mediation and protection: "We wish the Superintendent appointed by the United States Genl. Chapin to be present and see justice done us in our negotiations, as we look on him as our father. We do not expect that he will confine his care to us only, but that he should be a mediator between both parties." ("Proceedings of a Meeting between Governor George Clinton with the Cayugas and Onondagas from Buffalo Creek and Grand River," March 13-17, 1794, Legislative Assembly Papers, vol. 40, folios 225-242; see Exhibit N).

32. In November 1794, immediately following the signing of the Treaty of Canandaigua, a delegation of Onondaga and Cayuga chiefs requested a meeting with U.S. Indian Commissioner, Timothy Pickering and their superintendent, Israel Chapin. At this meeting, they expressed disappointment at New York State's refusal to meet the chiefs at Buffalo Creek to renegotiate the land cession treaties of 1793-1794, despite a series of letters sent by Chapin to Clinton. The Indians appear to be despairing that the state will respond to their claim and they ask for Pickering's assistance:

Brother,

We have told you that something was heavy on our minds, and as you were sent forward by General Washington and the Fifteen fires to ease the minds of the Six nations, we address ourselves to you. When we opened our minds to you the other day, you told us you would give your assistance on any thing which would be to the advantage of our nations. We thanked you and accepted of your promised assistance. Now listen to the minds of the two nations here present.

Brother,

It is the situation of our lands which makes our minds uneasy. We have but two small pieces left and we are desirous of reaping from them all the benefits which they are capable of yielding. The York people have got almost all our Country and for a very trifle. . . .

We desire this business may first be laid before General Washington and by him be sent to the York people, and we request Gen'l Washington to ask the York

people to grant what we desire. And we desire them to let us know quickly whether they will comply with our request. If they do, let them first inform Gen'l Chapin of their determination, and he will inform those at the Westward as well as those at the Eastward. We shall want his assistance, if our requests respecting our annual dues (?) are complied with. We wish the York people to take this matter into their serious consideration and we shall expect that they will comply with our wishes.

Speech of the Onondagas & Cayugas about their reservations. Addressed to T. Pickering Nov. 16 1794, Pickering Papers, 62: 104-105v. (Exhibit R)

The Six Nations and Onondagas were repeatedly assured by federal officials that the United States Government would protect Six Nations land rights. Moreover, the Six Nations were repeatedly told that state treaties, without the sanction of Congress, could not be valid

33. As indicated above, the Six Nations had been told by United States officials at their very first treaty council—the Treaty of Fort Stanwix, 1784—that “a treaty with an individual state without the sanction of Congress could be of no validity.” (Oliver Wolcott, Arthur Lee, and Richard Butler to the President of Congress, dated Fort Stanwix, October 5, 1784, Papers of the Continental Congress, item 56, folios 133-136; see Exhibit O.) Four years later, the Six Nations chiefs informed Governor Clinton that they had “promised Congress not to attend any Council but what should be called by their Authority” (Message of the Six Nations to Governor George Clinton, dated Buffaloe Creek, May 14, 1788, in Hough, ed., *Proceedings of the Commissioners*, p. 148; see Exhibit A.)

34. Although this assertion by the federal treaty commissioners would remain in question during the Articles of Confederation period, the federal relationship with Indian nations was clarified and defined with the passage of the Trade and Intercourse Act in July, 1790. Over the next five years, the United States government made repeated efforts to acquaint the Indian nations of its provisions. The first time the Six Nations were officially informed of this new

policy of the United States was at the Tioga Point conference in November, 1790. This excerpt comes from a speech by U.S. Indian Commissioner, Timothy Pickering:

. . . I am particularly required to communicate to you, in a plain and fair manner, the late act of Congress respecting trade & intercourse with the Indian Tribes. . . .

The fourth section is intended for the mutual advantage of the United States and of the Indian Tribes. In the past, some white men have deceived the Indians, falsely pretending they had authority to lease or purchase their lands: And sometimes they have seized on more lands than the Indians meant to sell them; again falsely pretending that those lands were comprehended within their purchase. Such fraudulent practices have made our brothers angry and sometimes occasioned hostilities, war & bloodshed. Yet Indians will always be exposed to such deception and impositions while they continue to sign and seal papers which they cannot read. Now brothers, to prevent these great evils in the future, the Congress declare that no sale of lands made by any Indians, to any person or persons, or even to any State, shall be valid (or of force) unless the same be made at some public treaty held under the authority of the United States.

. . . lay up this law in your hearts & keep it fresh in your memories.

Source: Pickering Papers, vol. 61, folios 78-78A (Exhibit S)

35. The most significant and widely-disseminated pledge of federal protection was made by President George Washington during a visit by a Seneca delegation to the nation's capital in Philadelphia in December 1790. In response to a speech by Cornplanter, the Seneca's spokesman, who complained of fraudulent land purchases, Washington promised federal protection and cited the Non-Intercourse Act as proof of the nation's policy:

. . . the General Government only, has the power to treat with the Indian nations, and any treaty formed, and held without its authority, will not be binding.

Here, then, is the security for the remainder of your lands. No State, nor person, can purchase your lands, unless at some public treaty, held under the authority of the United States. The General Government will never consent to your being defrauded, but will protect you in all your just rights.

Hear well, and let it be heard by every person in your nation, that the President of the United States declares, that the General Government considers itself bound to protect you in all the lands secured to you by the treaty of fort Stanwix, the 22d of October, 1784, excepting such parts as you may have since

fairly sold, to persons properly authorized to purchase of you. You complain that John Livingston and Oliver Phelps, assisted by Mr. Street, of Niagara, have obtained your lands, and that they have not complied with their agreement. It appears, upon inquiry of the Governor of New York, that John Livingston was not legally authorized to treat with you, and that every thing that he did with you has been declare null and void, so you may rest easy on that account. But it does not appear, from any proofs yet in possession of Government, that Oliver Phelps has defrauded you. If, however, you have any just cause of complaint against him, and can make satisfactory proof thereof, the federal courts will be open to you for redress, as to all other persons.

Source: *American State Papers: Indian Affairs*, vol. 1, p. 142. (Exhibit T)

36. This speech by Washington, along with the Non-Intercourse Act would be printed by the federal government to be distributed to each of the Six Nations at the Painted Post Conference, in July, 1791. It would be reiterated and referred to at the U.S.-sponsored meeting with the Six Nations at Philadelphia in January 1792.

37. In October, 1794, as the Six Nations were gathering in western New York for the negotiations that would culminate in the Treaty of Canandaigua, delegates from the Oneida Nation met with U.S. Indian Commissioner, Timothy Pickering at Canandaigua. The meeting focused on the troubled state of the Oneidas' landed affairs and on internal political divisions within the nation. Pickering offered a particularly strong statement of the federal government's understanding of the Non-Intercourse Act and its application to the New York State land cession treaties:

I hold in my hand, & now give you, that article of the law of the U. States which was made to protect your land: keep it, and show it to every one who shall tempt you to part with them. I have explained to you what I take to be the true meaning of the law: and I believe I am not mistaken. Perhaps some may tell you that the President and Great Council of the U. States have no right to meddle with your lands, and even to keep you from being cheated out of them: But pay no regard to such men: Consider them as deceivers, who want to take your lands from under you . . .

Brothers, I have just told you that by your own agreement you cannot sell or lease the remainder of your land, except to persons appointed by the State of New

York. But I now tell you further, that the State itself cannot buy it, unless the agents appear at a Council Fire kindled by the United States, and in the presence, & with the approbation of the Commissioners appointed by the President, agree on the price. And after this, the paper containing the articles of the treaty signed by the Chiefs, must be laid before the President & his Council of wise men, and be approved by them, before it can have any strength.

Brothers, I desire you to remember my words. I know you will be told the State has all the power over your lands, and that the President and his Council have nothing to do with them. But, Brothers, stop your ears, and do not believe them. The Great Council of all the United States have declared, and their words are strong, that your lands shall not be taken from you, unless by a treaty of which the President & his wise men shall approve. But, Brothers, even if the right of the United States to interfere were doubtful, your own right is certain. The land is yours; and the State cannot take it from you without your own consent. And if any agent come to you to buy it, tell them plainly, that you will make no bargain, but it in the presence of the faithful men whom the President shall appoint; and that when the bargain shall be made it shall not have any strength until the President and his Council approve it. Speak strong and be not afraid. Follow this advice, and nobody can hurt you: for the United States will protect you.

Source: Consultation between Timothy Pickering and the Oneida delegation, October, 1794, Pickering Papers, vol. 60, folios 217-230; quotes at 226-228A. (Exhibit U)

38. In May 1795, Timothy Pickering, who had recently been named Secretary of War by President George Washington, was informed that the New York State Legislature had passed an act authorizing commissioners to negotiate land cession treaties with the Onondagas, Oneidas, and Cayugas. He was further informed that, although the legislature called on Governor Clinton to request a federal commissioner to attend the negotiations, the Governor had chosen to proceed without complying with the requirements of the Non-Intercourse Act.

39. Pickering responded to New York State's defiance of federal authority in three ways: first, he directed the U.S. Superintendent for the Six Nations, Israel Chapin, Jr. to "give no aid or countenance" to the state treaty and to inform the Indians "that any bargains they make at such a treaty as that proposed to be held at Scipio, will be void; and as the guardian of their rights you will advise them not to listen to the invitation of any Commissioners unless they have

authority from the United States to call a treaty.” Secondly, he requested Attorney General William Bradford to issue an official opinion as to the legality of the proposed state treaty; and finally, he sent the Attorney General’s finding to Governor Clinton, as well as Chapin. The following is an excerpt from Attorney General Bradford’s opinion:

The Attorney General has the honor of stating his opinion upon the question propounded to him by the Secretary of War, viz: Whether the State of New York has a right to purchase from the Six Nations or any of them, the lands claimed by those nations and situate within the acknowledged boundaries of that State, without the intervention of the general government . . .

The language of this act [the Non-Intercourse Act] is too express to admit of any doubt upon the question unless there be something in the circumstance of the case under consideration to take it out of the general prohibition of the Law.

Nothing of this kind appears in the documents submitted to the attorney General. It is true, that treaties made by the State of New York with the Oneidas, Onondagas and Cayugas, previous to the present Constitution of the United States, those nations ceded all of their lands to the people of New York, but reserved to themselves and posterity forever for their own use and cultivation, not to be sold, leased, or in any other manner disposed of to others, certain tracts of their said lands, with the free rights of hunting and fishing. So far therefore as respects the lands thus reserved, the treaties do not operate further than to secure to the State of New York the right of preemption: but subject to this right they are still the lands of these nations, and their claims to them, it is conceived, cannot be extinguished but by a treaty holden under the authority of the United States and in the manner prescribed by the laws of Congress.

Source: Opinion of Attorney General William Bradford, June 16, 1795, O’Reilly Papers, vol. 11, New-York State Historical Society. (Exhibit V)

40. When informed by Israel Chapin that the New York Commissioners had proceeded to negotiate a treaty with the Cayugas and Onondagas at Cayuga Ferry (Scipio), Pickering responded that “Seeing the Commissioners were acting in defiance of the law of the United States it was certainly proper not to give them any countenance; and as that law declares that such purchases of the Indians that those commissioners were attempting to make, invalid, it was also right to inform the Indians of the law and of the illegality of such purchases.”

41. In March, 1802, a delegation of Seneca, Onondaga, and Cayuga chiefs from Buffalo Creek traveled to Washington, D.C. to meet with Secretary of War, Henry Dearborn. The delegation was led by the Seneca spiritual leader, Handsome Lake, and one of its main purposes was to obtain a written federal confirmation of Six Nation lands. In answer to Handsome Lake's request, Secretary Dearborn responded: "Your good father the President of the United States having seen your talk of yesterday directs me to assure you, that his ears are ever open to the just complaints of his red children and his heart ever disposed to afford them relief . . . he has instructed me to relieve your apprehensions on that subject by furnishing you with a written instrument which is to be considered as a General guarantee of all the lands within the United States to which you are entitled by reservation or otherwise with his solemn assurances that they shall not be taken from you but by and with your consent. This paper, I now on behalf of the Government of the United States present you." The document reads:

By authority of the President of the United States.

To all people to whom these presents shall come, Greeting.

Whereas it has been represented by some of the Chief men of the Seneca and Onondago nations of Indians that they are entitled to certain reserved Tracts of land lying on the Cattaraugus Creek and on or near the Allegany, and which has been surveyed, laid off, and the lines regularly run and distinctly understood, but that they are not in possession of deeds securing to them the peaceable and undisturbed occupancy thereof. As well therefore to remove all apprehensions from the minds of the Chief men and on behalf of the Government of the said United States, That all lands claimed by and secured to said Seneca and Onondago Nations of Indians by Treaty, Convention or deed of conveyance or reservation, lying and being within the limits of the said United States, shall be and remain the property of the said Seneca and Onondago Nations of Indians forever; unless they shall voluntarily relinquish or dispose of the same. And all persons, Citizens of the United States, are hereby strictly forbidden to disturb said Indian Nations in their quiet possession of said land.

Given under my hand and the seal of the War Office of the United States, this seventeenth day of March in the year one thousand eight hundred and two.

Henry Dearborn
Secretary of War

Source: Confirmation of land rights of Senecas and Onondagas, March 17, 1802, National Archives, RG 75, Records of the Secretary of War, Indian Affairs, Letters Sent, vol. A, pp. 192-193; also in Logan Papers, vol. 11, Historical Society of Pennsylvania, Philadelphia; and Haverford College Library, Haverford Pa., Indian Committee Records, Manuscripts Box 1. (Exhibit W)

The Six Nations and the Onondaga Nation repeatedly expressed a desire to maintain their lands, not to sell them; but when importuned by endless pressure from individual speculators and officials from New York State, they pursued a variety of strategies—including plans to lease lands rather than sell—in order to maintain title and interest in their homeland

42. Faced with increasing pressure from state officials and white land speculators for Six Nations territory, the nations of the Six Nations Confederacy tried desperately to hold on to their lands. They repeatedly told state and federal officials that the Six Nations had no desire to sell or otherwise divest themselves of their homeland. As the pressure intensified in the late 1780s and early 1790s, some of the Six Nations developed strategies to maintain their lands as best they could, such as the strategy of leasing. Denying the state's theory of preemption rights, the Six Nations claimed the right to lease land to "friends" rather than sell land to the state.

43. Two of the Six Nations would pursue this policy the most—the Oneidas and the Cayugas, but the Onondagas appear to have been influenced by this strategy as well—a strategy explained in the following excerpts from Oneida sources. The first is a memorial sent by Jacob Reed and three other Oneidas to New York State officials in February 1788, at the time of the Livingston lease:

. . . Brothers: We are your Allies, we are a free People, our Chiefs have directed us to speak to you as such . . .

Brothers: We are determined then never to sell any more; the Experience of all the Indian Nations to the East and South of us has fully convinced us, that if we follow their Example we shall soon share their Fate. We wish that our Children and Grand Children may derive a comfortable Living from the Lands which the

Great Spirit has given us and our Forefathers. We therefore determined to lease them . . .

Brothers: We are surprised to hear that you are displeased because others have accepted that, which your Chiefs have told us is beneath your Nation. But, Brothers, we are more surprised still, to learn you claim a Right to control us in the Disposal of our Lands; you acknowledge it to be our own as much as the Game we take in hunting. Why then do you say that we shall not dispose of it as we think best?

Source: Memorial of Jacob Reed and three other Oneidas to “the Great Men of the State of New York,” February 1788, in Hough, ed., *Proceedings of the Commissioners*, pp. 124-125. (Exhibit X)

44. The leasing strategy was an attempt on the part of the Indians to maintain maximum freedom over the disposal and use of their lands, as the Oneida chief, Good Peter, explained to Timothy Pickering in 1792 in the following excerpt:

Bro[ther] I did not then expect [at the close of the Revolutionary War] that we should be reduced to our present situation. We then thought we should be the sole proprietors of our own land; and that our disposal of it should be optional with us, in case of a successful issue [of the war]. . . . It seems to us that we are not really freemen; nor have had the real disposal of our property. If we understand what is meant, by a person’s being free and independent, as to his own property, he may either lend, or sell his property, or any portion of it as he pleases.

Sources: Good Peter’s speech to Timothy Pickering, Philadelphia, April, 1792, in Pickering Papers, vol. 60, folios 121-133, quote at 121-A; (Exhibit Y)

45. While the neighboring nations of the Onondagas—the Oneidas and Cayugas—were more active in the pursuit of leasing as a strategy to maintain sovereignty over their lands, it appears that the strategy held some appeal for the Onondagas. During the negotiations for the treaty of Fort Schuyler, 1788, for example, the leading Onondaga spokesman made the following offer to Governor Clinton in his first official speech: “If you are willing to take a lease of our lands, we are willing to give you one.” (Hough, ed., *Proceedings of the Commissioners*, p. 184; Exhibit Z) In 1794, the Onondaga chiefs from Buffalo Creek told U.S.

Commissioner Timothy Pickering that they wished to lease their lands at Onondaga. They expressed fear that, in the wake of the 1793 Treaty of Onondaga which had been negotiated without their participation, all Onondaga lands would soon be sold to the state, without their consent.

Brother,

It is the situation of our lands which makes our minds uneasy. We have but two small pieces left and we are desirous of reaping from them all the benefits which they are capable of yielding. The York people have got almost all our Country and for a very trifle. They were not [illegible] the liberty of disposing the little that remains in such manner as will do most good to our old women and children and children's children. For this reason we desire to dispose of our land for an annual rent to be paid to us and our posterity forever. For we have nothing to leave to our children but what our little pieces of land will produce, and all they will produce will be but a trifle when divided among so many families: but it will at least relieve the poor, if we can obtain the just value of our land. And for so good a purpose we think the liberty we request will not be refused.

Brother,

When we desire to dispose of our lands in this manner, we do not mean to take the seats away from any families of our nations who now live upon our reservations so much as shall be proper, we shall desire to have reserved for their use. These reserves we will agree on among ourselves, if the liberty we request is granted.

Source: "Speech of the Onondagas & Cayugas about their reservations. Addressed to T. Pickering, Nov. 16, 1794," in the Pickering Papers, vol. 62, folios 104-105v. (See Exhibit R)

New York State officials deliberately exploited the expressed Six Nations' desire for leases by deceptively representing the state land cession treaties as leases, not absolute sales of land. State officials also exploited the apparent division between the Onondagas at Buffalo Creek and those Onondagas who remained at the Onondaga homeland to coerce participation in state treaties

46. The purported Onondaga land cession at the Treaty of Fort Schuyler, 1788, was signed by Onondagas living at the traditional Onondaga homeland. At that time, the majority of the nation still resided to the west at Buffalo Creek, where the Onondagas had fled after the destruction of the main Onondaga village by Continental Army troops and New York militia in

1779. The Buffalo Creek Onondagas characterized the Indian signers of the Treaty of Fort Schuyler in a disparaging manner as “two Sachems one chief Warrior, and a few young Men & Women,” who gathered to meet the Governor “at the instigation of a Couple of Traders residing in our Villages.” (Six Nations to President Washington, July 2, 1789, Draper Collection, Series U, vol. 23, folios 164-169; see Exhibit E) The main spokesmen for the Onondagas at the Treaty of Fort Schuyler, Black Cap and Kahiktoten, explained their reason for meeting the Governor as motivated by the actions of Indians from Buffalo Creek.

Brother! We would now assign a Reason for our Conduct [in negotiating a treaty with New York State.] We have heard of a Treaty at Kanadasegea and another held at Buffalo Creek. We were not concerned in either of these Treaties. We sent some Persons there to be Hearers or Spectators, but we had no Agency in either of those Treaties, & utterly disapprove of what was there transacted. The Lands are our own, and we appeal to you Brothers, how would you feel if People at a Distance would undertake to sell Lands which belong to you and on which you live, and therefore we must attend to our Interest and endeavour to secure something to us & our Children after us.

Source: Speech by Black Cap at the Treaty of Fort Schuyler, September 10, 1788, in Hough, *Proceedings*, pp.196-197. (Exhibit AA)

47. There is considerable evidence that Governor Clinton misled the Onondagas who negotiated the Treaty of Fort Schuyler into thinking that they were signing a lease that would restore their lands from the threat of the Livingston Company. As the negotiations came to a close on September 10, 1788, Black Cap presented his view of the agreement as being something other than an absolute sale:

We have all considered the Conversation which has passed between us since the Beginning of this Treaty. Two things were proposed us: The one a great and immediate Good, the other a continuing Good to us and our Children after us. Brother! In your Wisdom you exhorted to great Deliberation on the Subject. We have therefore chosen the latter Proposal you made to us. We have chosen to convey to you our Country in a Way in which we may receive a continual Benefit; and when the Cold comes we may be kept warm, & when hungry we may have something to subsist on.

Source: Speech of Black Cap, September 10, 1788, in Hough, *Proceedings*, p. 196. (Exhibit AA)

48. At the treaty signing on September 12, 1788, Black Cap reiterated this view of the treaty, thanking the Governor for calling “this Council Fire to establish that which we should have lost forever, without your Interposition.” (*Ibid.*, p. 204; Exhibit BB)

49. When the Oneida treaty—which was negotiated immediately after the Onondaga treaty—is examined, evidence of state misrepresentation is even stronger. Governor Clinton told the Oneidas on September 20, 1788, “Be not deceived in supposing that it was our Intention to kindle a Council Fire at this Time in Order to Purchase Lands from you for our People. We have already more Lands than we have People to settle on them. If we had wanted lands for our People to settle on, we would have told you so and requested you to have sold us some and would have paid you a reasonable Price for them.” (Hough, *Proceedings*, p. 223; Exhibit CC)

When the Oneidas signed their land cession treaty on September 22, 1788, Good Peter declared, “My Nation are now restored to a Possession of their Property which they were in danger of having lost.” (*Ibid.*, p. 235; Exhibit DD)

50. The Oneida Council later claimed that when they left Fort Schuyler in September, 1788, they were convinced that they had negotiated a lease:

We returned home possessed with an Idea that we had leased our Country to the People of the State, reserving a Rent which was to increase with the increase of the Settlements on our Lands until the whole Country was settled, and then to remain a standing Rent forever. This, Brother, was our Idea of the Matter. We supposed that we had at the same time reserved a sufficient Tract of Country for our own Cultivation; but since we had time to consult the Writings and have them properly explained, and have seen the Proceedings of your Surveyors, we find our Hopes and Expectations blasted and disappointed in every particular. Instead of leasing our Country to you for a respectable Rent, we find that we have ceded and granted it forever for the Consideration of the inconsiderable Sum of Six hundred Dollars per Year.

Source: Letter of the Oneida Council to Governor Clinton, January 27, 1790, in *Ibid.*, pp. 360-361. (Exhibit EE)

51. Good Peter would later repeat this claim to U.S. Indian Commissioner Timothy Pickering at Philadelphia in April, 1792, asserting that Governor Clinton had said to the Indians at Fort Schuyler, “you have now leased to me all your territory, exclusive of the reservation, as long as the grass shall grow & rivers run. He did not say ‘I buy your country.’ Nor did we say ‘We sell it to you.’” (Good Peter speech at Philadelphia, April, 1792, in Pickering Papers, vol. 60, folios 127A-128; see Exhibit Y) In this regard, it may be instructive to note that when John Tayler, the Agent for the New York Indian Commissioners submitted an official voucher to the state for treaty funds delivered to the Indians in 1789 and 1790, the voucher read: “To Cash paid the Indians the Amo[unt] of the Annual Rent.” (New York State Archives, A0802-78, vol. 15, folio 61)

52. The second major Onondaga land cession treaty took place in November, 1793 at Onondaga. As in 1788, the state commissioners attempted to invite Onondagas from both Buffalo Creek and Onondaga, but the treaty was scheduled at a time when those residing at Buffalo Creek were unable or unwilling to attend. (Several key Onondaga chiefs, including Clear Sky, the acknowledged leader of the Buffalo Creek Onondagas had spent the entire summer of 1793 in negotiations in the Ohio country, attempting to broker a peace between the United States and the Western Confederacy of Indians.) In this treaty with New York State in 1793, themes similar to that of the 1788 Treaty of Fort Schuyler repeat themselves: the absence of Onondagas from Buffalo Creek at the treaty; the willful determination by state commissioners to proceed with treaty negotiations despite being notified that the Buffalo Creek Onondagas would not be present; the fear among the Onondaga negotiators that their western brethren would sell or lease their reservation to the state if they had the chance. But there are circumstances that

make the Treaty of Onondaga, 1793 quite different from the Treaty of Fort Schuyler, 1788. It was negotiated in violation of a federal statute, the Non-Intercourse Act, which expressly prohibited such state land cession treaties without federal oversight and participation. Unlike the Treaty of Fort Schuyler, where the state obtained a purported “ratification” of the treaty from the Buffalo Creek Onondagas in June 1790, there was never even a pretence that the state obtained subsequent ratification of the Treaty of Onondaga from those who denied its validity. And perhaps most striking of all, this time the state commissioners openly and cynically presented the land cession treaty as a lease, not a sale, throughout the negotiations leading to the signing of treaty. The state commissioners did this because they were aware of the interest, especially among the Cayugas and Oneidas, with whom they were also negotiating, to lease part of their lands.

53. In late summer of 1793, Governor Clinton appointed Simon De Witt, John Cantine, and U.S. Superintendent Israel Chapin as commissioners to negotiate with the Oneidas, Onondagas, and Cayugas. Council invitation messages were sent to Buffalo Creek as well as the Oneida, Onondaga, and Cayuga reservations to the east. On October 12, 1793, the Cayuga chief, Fish Carrier replied to the governor’s invitation on behalf of the Cayugas and Onondagas at Buffalo Creek. His answer makes it clear that the invitation spoke of negotiations for a lease or a sale. “You informed us the other day that you and two other persons were appointed by the Governor as Commissioners to treat with us for the sale or lease of our Lands, and that a meeting was proposed to be held on the lands to be sold or leased this Fall.” Fish Carrier said that the “season was too advanced” to make attending the state treaty feasible; moreover the Buffalo Creek Indians were suffering through a “great sickness,” but he promised that the Onondagas and Cayugas would attend if the treaty were postponed until the spring. (See Exhibit K)

54. Despite the strong recommendation from Israel Chapin to postpone the treaties to allow for the participation of the Buffalo Creek Indians, De Witt and Cantine proceeded to meet first with the Oneidas and then with those Onondagas living at the reservation. The commissioners failed to convince the Oneidas to make an agreement, and when De Witt and Cantine arrived at Onondaga in November, they appeared determined to gain a successful outcome. In their opening speech, De Witt and Cantine repeatedly referred to the proposed agreement as a lease, not a sale:

Brothers of the Onondago Nation: The great Council of our State have heard [from] your Nation and that you were willing to lease them for rents to be paid to you and your children every year forever hereafter. Brothers, our great Council suppose that you would rather lease your lands to the state than to individuals because you must know the State always pays its Debts the moment they become due & that individuals often neglect to pay till they are compelled by our laws which are attended with expense and trouble. Brothers, we are therefore sent by our great Council to enquire of you which Lands you are inclined to lease and which to keep for yourselves to live upon. After we know your minds on this subject we will tell you what we will allow you as an annual rent from the State for the lands so to be leased, and what we will besides now pay down to you.

55. The Onondaga spokesman, Kahiktoten, responded that the Onondagas had never asked the Governor to send commissioners to meet them, claiming that it was their chief at Buffalo Creek who desired to dispose of the reservation and consolidate the Onondagas at Buffalo Creek, but “we are deaf to him.” The commissioners responded that the people of New York “will rejoice to hear that their ancient Brothers the Onondagaes, the Keepers of the great council fire of the six Nations, are determined not to quit the Country which was given them by the great Spirit but to enter the Earth in company with their brothers the white people of the state.” They continued their speech in a similarly deceptive manner:

We did not come to buy your land. Our Chiefs will never send to you on any such business. No Brothers, they wish you ever to live among us, they choose rather to strengthen and confirm you in your seats; the white people knows how to

make a little land productive of more than you are, they have long been accustomed to matters of that nature . . .

Your reservation now produces you but little—our great men, if you chuse, will take [care?] of such part of your Land as you do not need for cultivation, and will pay you an annual rent for the same as long as the Earth shall continue. . . . Whenever therefore Brothers, you shall point out to us such parts of your reservation you may wish to lease to our great men, we will, as observed yesterday, tell you how much we are direct[ed] to obligate the state to pay you annually forever and how much we are authorized to pay you in hand when our business is closed. . . .

After deliberating on our last speech the Onondagaes informed us that they had agreed to lease part of their Reservation; several proposals were made with respect to the bounds of the lands to be leased, till at length we agreed on those written in the deed which they executed to us. . . . They also told us, at the conclusion of our business, that their only inducement to part with their property was their apprehension that those of their Nation who reside at Buffaloe Creek would sell the whole of their reservation and leave no part for them to remain upon, and that a just dividend would bear to those Indians, if they would choose to attend when annual payments were made.

Source: Proceedings of the Negotiations between the Onondaga Nation and Commissioners of the State of New York, Simeon De Witt and John Cantine, New York State Archives, A-1823, Legislative Assembly Papers, vol. 40, folios 140-149. (Exhibit FF)

56. The preceding account comes from the official report of the negotiations submitted by De Witt and Cantine to the state legislature. In this official account, the word “sale” is never used; rather, all of the speeches of the New York Commissioners refer to “leases” and “rents.” The official account seems to suggest, moreover, that the Onondagas readily acquiesced to proposed lease, if only as a way of derailing attempts by the Buffalo Creek Onondagas to dispose of the reservation entirely. There exists, however, an unofficial version that gives an insight, however dim, into the true attitude of the Onondagas to De Witt and Cantine’s proposals. In the New York State Archives are rough notes kept by the Commissioners of the speeches by the Onondagas, which indicate that the Indians had no desire

to sign any agreement, even a lease, and that they did so only under pressure from the Commissioners.

Speech of the Onondagoes in answer to the speech of the Commissioners of this morning.

Br[others] The Gr[eat] men of the State of New York attend[.] We propose to give an answer in reply to your Speech. You will excuse us if we do not Repeat your speech but what we say you may depend will be the real sentiments of the Onondagoes.

Br. At the Treaty of F. S. we entered into a solemn agreement which should never be infringed but it seems you now speak a different language. . .

We here wish now that you will not be offended if we refuse your request. We cannot wish on this occasion to offend you we will grant your request. . . .

Now B. this is the 2nd covenant we have entered into let it be the last let the subject be never again mentioned.

B. This is the reply we have to make to your last speech.

Cayadota

B. We will now inform you what is the motive for parting with our lands now. Some of our people reside to the westward with one of our principle Chiefs and we are afraid that they might be inclined to dispose of our whole country but we are desirous of continuing here and remain with you.

Source: New York State Archives, A4016, vol. 21. (Exhibit GG)

57. There is no indication in either version that the Onondagas understood the treaty as permanently selling three-quarters of their reservation. Indeed, three months later, the chief Onondaga spokesman, Kahiktoten, said in a speech in Albany that the Onondagas “are not uneasy in Respect to our lands. Last fall two of your Chiefs were Sent from you. I would not have agreed with them if I had any apprehensions that we should loose any part of it.” A second Onondaga speaker expressed a similar lack of awareness that lands had been sold: “we recollect that the agreement at Fort Stanwix was that the lands reserved to us was our own, that no more

bargains could be made to take them from us. Now Brothers we have already told you that we were Satisfied with the arrangement made with your two Chiefs last fall.” (“At a meeting of the Onondago Nation with his Excellency the Governor at Albany, February 15, 1794,” New York State Archives, A-1823, Legislative Assembly Papers, vol. 40, folios 167-190; Exhibit HH)

58. Finally, it seems clear that at the Treaty of Cayuga Ferry, 1795, New York State Indian Commissioners once again misled the Onondagas into thinking that they were negotiating a lease, which was what the Onondaga chiefs at Buffalo Creek had requested in their speech to Timothy Pickering in November, 1794 (see above). Transcripts of the treaty negotiations with the Onondagas have not been found, however, partial transcripts of the negotiations with the Oneidas which took place immediately after the Onondaga treaty, do exist, and they contain the same “lease” and “rent” language. The chief negotiator for the state in 1795 at both the Onondaga and Oneida treaties was Philip Schuyler. The following excerpt is from his opening speech to the Oneidas, in which he refers to a petition from the Oneidas to the State Legislature for the right to lease some of their reserved lands. The speech also includes an elaborate justification for why state was meeting with the Indians without the involvement of federal commissioners in defiance of the opinion of that U.S. Attorney General William Bradford had issued the previous month:

Brothers. Whilst our great council was deliberating on this Business, and devising means to accomplish your Desire, and to procure you a greater annual Rent, Colonel Pickering by order of the president of the United States, sent us a speech delivered by the Onondaga & Cayuga Nations at the Treaty held at Canadaghque, in which those Nations (as you had done to our great Council) also requested that their Lands might be made more productive of an annual income.

In consequence, therefore, of your Request, and of that of the Onondagas & Cayugas, transmitted by order of the president, our great Council determined to afford the Relief which was requested, and passed an act authorizing us to stipulate the payment of an annual Rent for so much of the Lands reserved to your use and to the use of the Onondagas & Cayugas, as *you* or *they* should determine

to have so appropriated; and thus our great Council *substantially acquiesced* in what *appeared* to be the intention of the President of the united states, in sending us the papers already mentioned; but they did not order us to apply for the attendance of an agent on the part of the united states, as they not only conceived it unnecessary, having always heretofore Negotiated treaties with you and with the Onondaga and Cayuga Nations, without the interference of Congress, *as with a people residing within the known & acknowledged limits of the States of New York*. But if it *even had been Necessary*, the president's Message appeared to have superseded it. Thus, Brothers, You see that Colonel Pickering had been misinformed, and has misapprehended the Business, in supposing that Governor Clinton refused to apply for an agent; . . .

As it would be improper for you to rent the whole of the land reserved to your use, our great Council has therefore strictly charged us to take *particular Care* that a *sufficient* Quantity may be reserved to your Use, and never to be sold or rented, that you and your posterity may continue to enjoy the same in *peace* and *comfort* to the *End of time*. We shall therefore only ask you, if you will rent *a part* of it, and *that part* will be as follows: . . .

If you choose to rent somewhat more, we will take it, and *pay more*; but if you don't intend to lease as much as is above specified, you will be paid proportionally Less. If, however, you should determine not to Lease any of the Lands reserved for your use, the treaty will be at an End, as our power to treat will terminate by such a decision on your part.

Source: Proceedings of Negotiations held at Oneida, August 6, 1795, Philip Schuyler Papers, Indian Papers, Box 15, New York Public Library (Exhibit II)

59. Following the Treaty of Cayuga Ferry, 1795, the Onondaga Nation would steadfastly refuse to sign any more treaties with the State of New York, excepting two small transactions in 1817 and 1822. As it became apparent that Onondaga and Six Nations complaints to the federal government had not prevented New York State and private individuals from gaining control of Six Nations land, Indian leaders expressed a growing wariness of federal promises. In the following excerpt, the Seneca orator Red Jacket, speaking on behalf of the Six Nations, asked a federal official what good the promised protection of the United States had given the Six Nations:

. . . Brother—You have presented us a Flag of your Nation, and hope that the American Stars may enlighten the Six Nations and their Western Brethren. We

accept the Flag, but must remark, that our Chiefs have never been much enlightened by them, except when you have burnt our Towns where they have been flying; for such a Flag was once presented to the Onondaga Nation with a pipe and Protection, yet your People came and burnt their Town without Regard to either Protection or the Flag that was flying in it.

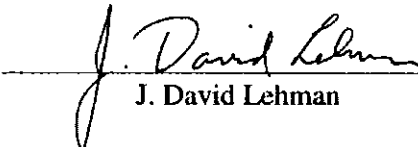
Brother—You hope we will bury the remembrance of last War; we have done that long ago, but are apprehensive you have not. Your mind we suspect is a good deal on War; Ours on saving our Land. You are a cunning People without sincerity, and not to be trusted, for after making Professions of your Regard, and saying every thing favorable to us, you then talk about a Road and tell us that our Country is within the lines of the States. This surprises us for we had thought our lands were our own, not within your Boundaries . . .

Source: Speech of the Senecas and others of the Six Nations in answer to Capt. Brueff's speech of 21 Sept. 1796 at Niagara, O'Reilly Papers, vol. 15: 41; also in *Iroquois Indians: A Documentary History*, reel 43 (Exhibit JJ)

60. In conclusion, it is apparent from the historical record that the Onondaga Nation and the Six Nations Confederacy repeatedly protested against and denied the validity of the three treaties—the Treaty of Fort Schuyler, 1788-1790, the Treaty of Onondaga, 1793, and the Treaty of Cayuga Ferry, 1795—by which the State of New York gained control of more than 99% of their lands. They repeatedly sought the assistance and intervention of the United States in their behalf to protect their lands. When these protests proved ineffectual in preventing the State of New York from acquiring their lands, the Onondaga Nation would focus increasingly in the 19th and 20th centuries on protecting their remaining territory and maintaining their cultural autonomy and independence.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 10, 2006


J. David Lehman

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(Winner of the Richard L. Morton Award, 1991)

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