BEFORE THE INDIAN CLAIMS COMMISSION

THE SISSETON AND WAHPETON BANDS
OR TRIBES, ETC., ) Docket No. 142

THE LOWER SIOUX INDIAN COMMUNITY, ETC., ) Docket Nos. 359 - 363

THE YANKTON SIOUX TRIBE, ) Docket No. 332-A

Petitioners, )

v. )

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: January 12, 1962

FINDINGS OF FACT

Docket Nos. 142, 359-363

The Commission makes the following findings of fact:

1. There are four principal claimants involved in the above dockets, the Sisseton and Wahpeton bands of Sioux Indians claiming only in Docket 142, and the Medawakanton and Wahpakoota bands asserting claims in Dockets 359 through 363. At all times pertinent to the claims asserted herein these four bands were identifiable groups of American Indians with whom the United States concluded certain treaties, either severally or jointly. Although they were known collectively during treaty times as the Mississippi or Minnesota Sioux, they were separate land owning entities.

2. In August of 1862 there occurred a serious and bloody outbreak of the Mississippi Sioux in Minnesota against the white population that was finally quieted in 1863 by military force. As a result of this Indian war the four bands of Mississippi Sioux became widely dispersed, some having fled to West and Northwest, while others were rounded up, made prisoners,
and then were forceably removed to new locations outside the State of Minnesota.

By 1866 practically all of what had comprised the Medawakanton and Wahpakoota bands were located at what was designated as the "Santee Sioux" reservation on the mouth of the Niobrara River in Nebraska. In 1869 a considerable number of the Medawakantons and Wahpakootas left the "Santee Sioux" reservation and settled down in Flandreau, South Dakota. Others moved to Granite Falls on the Minnesota River.

There were some members of the Medawakanton and Wahpakoota bands who had remained friendly to the whites, and who never removed from Minnesota. Still others eventually drifted back into Minnesota, so that as time passed quite a number of these "Santee Sioux" became resettled throughout the state.

In 1863 the major portion of the Sisseton and Wahpeton bands of Mississippi Sioux had fled to the west with some moving into Canada. Relatively few of their numbers had been captured by the military and made prisoners of war. By the Act of March 3, 1863, 12 Stat. 819, Congress provided for the creation of a reservation outside the limits of any state. Said act provided for 80-acre allotments to any member of the four bands of Mississippi Sioux who would engage in agricultural pursuits. Under the authority of this act the President selected certain lands at Crow Creek on the Missouri as the site of the new reservation. In May 1864, the military authorities removed all Indian prisoners thereto. Among them were approximately 300 Sisseton and Wahpeton Sioux.
By 1864 there remained few, if any, Sissetons or Wahpetons in Minnesota, but along about 1866, some two years after hostilities had terminated, they began to return in scattered numbers. Under the treaty of February 19, 1867, Congress sought to establish two permanent reservations, one at Lake Traverse, South Dakota, and the other at Devils Lake, to accommodate all Sissetons and Wahpetons who did not take allotments at the Crow Creek reservation.

3. The descendants of these four bands of Mississippi Sioux are now for the most part banded together in organized communities on seven reservations. They are located as follows:

1. The Sisseton and Wahpeton Tribe of Sioux Indians of the Sisseton Reservation in South Dakota (Lake Traverse); and

2. The Sisseton and Wahpeton Tribe of Sioux Indians of the Fort Totten Reservation in North Dakota (Devils Lake).

Together the members of these two communities have succeeded to the interest of the original Sisseton and Wahpeton bands.

3. The Santee Sioux Tribe of the Santee Reservation in Nebraska. Here resides the main body of Medawakanton and Wahpakoota Sioux who are now called the Santee Sioux.

4. The Flandreau Santee Sioux Tribe of South Dakota. These are "Santee Sioux" who departed the Santee Agency at the mouth of the Niobraro River in Nebraska in 1869.

5. The Lower Sioux Indian Community in Minnesota, and

6. The Prairie Island Indian Community in Minnesota.
These two Indian communities comprise descendants of those Medawakanton and Mississippi Sioux who during the 1862 Sioux outbreak stayed on friendly terms with the white settlers and sought to remain on the old Sioux reservation in Minnesota. They were for the most part half breeds and mixed bloods. Ultimately they were forced to remove from the old reservation, and compelled to live a gypsy existence until at least 1884. At that time Congress took legislative steps to appropriate money for the purchase of lands and provisions, both of which they sorely needed.

7. The Upper Sioux Indian Community in Minnesota. This community consists of Medawakanton descendants as well as Flandreau, Santee, and Yankton bands of the Sioux tribe.

Each of the above Indian groups is an organized community, authorized to represent that community and all its members. All are parties plaintiff and, as such, and in a representative capacity are entitled to bring and maintain this suit under Section 2 of the Indian Claims Commission Act in behalf of all the descendants of their respective bands of Mississippi Sioux who participated in the treaties pertinent to the claims asserted herein.

There are five individual petitioners in Dockets 359-363, who are members by blood of the Medawakanton and Wahpakoota Tribes of Sioux, and descendants of members of the original Medawakanton and Wahpakoota bands of the Mississippi Sioux. In their representative capacity they are entitled to join with the other plaintiffs in maintaining these actions on behalf of themselves and all other Medawakanton and Wahpakoota Sioux
5. On September 23, 1805, Lt. Zebulon M. Pike, on specific instructions from General James Wilkinson, entered into the following agreement with certain chiefs and warriors of the Sioux tribe for the cession of two small tracts of land, one located at the mouth of the St. Croix River and the other at the confluence of the St. Peters (now the Minnesota River) and the Mississippi Rivers.

"Article 1. That the Sioux Nation grants unto the United States, for the purpose of the establishment of military posts, nine miles square at the mouth of the river St. Croix, also, from below the confluence of the Mississippi, . . . to include the falls of St. Anthony, extending nine miles on each side of the river. That the Sioux nation grants to the United States the full sovereignty and power over said districts forever, without any let or hindrance whatsoever." (2 Kapp. 1031)
Article 2, which was to spell out the considerations paid for these two tracts, was left blank for the time being, and under Article 3 of said agreement the Sioux retained the privilege to pass over and hunt upon the ceded lands.

On March 29, 1808, President Jefferson submitted the agreement to the United States Senate where it was sent to Committee. On April 13, 1808, the Committee reported favorably on this agreement with an amendment to Article 2 of the agreement that contained the following language,

"... shall, prior to taking possession thereof pay to the Sioux two thousand dollars, or deliver the value thereof in such goods and merchandise as they shall choose."

The Senate unanimously ratified this agreement in its amended form on April 16, 1808.

6. The total area of the two tracts ceded to the United States under the 1805 agreement is approximately as follows: the St. Croix River tract which is 9 miles square, 51,840 acres; and the St. Peters River tract which is 18 miles by 9 miles, 103,680 acres.

7. Lieutenant Pike conducted the 1805 negotiations at a Sioux village located on the Mississippi River between the St. Croix and St. Peters Rivers. This was the village of "Le Petit Corbeau" or "Little Crow" the Sioux Chieftain, who belonged to the Medawakanton band of Sioux.

8. As early as 1660 the French through the efforts of their traders from Canada encountered the Sioux or "Nadaiesioux" along with other tribes within that vast area to the west and southwest of Green Bay and Lake
Superior. In the same year Messrs. Groseilliers and Radisson met a small band of Sioux Indians at a place traditionally adjudged to be at or near Knife Lake in the present Kannebac County, Minnesota.

In 1665 Father Claude Allouez, who had at this time established a mission at "La Pointe", which site is now the present town of Ashland, Wisconsin, encountered Indians who lived to the west near the great river called "Messippi."

Other French explorers and traders, who journeyed through the Sioux country along the upper Mississippi during this period, reported on their contacts with these Indians at their village sites and hunting grounds. These Indians were variously referred to as the "Issati," "Isanyati," "Mendeoncantons," "Houetpetons," and "Seseetwaons."

Among them were: Daniel Graysolon, sieur du Luth (Du Luth), who in 1679 and again in 1680 visited the great Sioux village at Mille Lacs; Father Louis Hennepin, who in 1680 visited the Sioux villages at Mille Lacs by journeying first down the Illinois River to the Mississippi where he joined a large party of Sioux warriors, and then accompanied them up the Mississippi across Lake Pepin and on to the Falls of St. Anthony. From this point they traveled overland to Mille Lacs. In 1685 Nicholas Perrot established Fort Antoine on the east shore of Lake Pepin in Sioux territory, where four years later he sought to extend French sovereignty over the entire area, and by so doing, acknowledged the "Nadaiesioux" to be proprietors of the surrounding country and rivers. In 1695 Pierre le Sueur constructed a fort just south of St. Paul about nine miles below the present town of Hastings.
in an effort to maintain peace between Sioux and Chippewa. In 1727 Rene Boucher reached the Lake Pepin or Sioux country and erected Fort Beauharnois.

9. While the French exercised genuine control over the Upper Mississippi valley for a hundred years or so, and had consistently traded with the Sioux tribes, the Chippewas, the Foxes and other neighboring Indians, the British traders toward the middle of the 18th century began to move into the Upper Mississippi regions in increasing numbers. So serious did British challenge become for the control of Indian trade, that inevitably hostilities broke out in 1755. This war, the French and Indian War, culminated in a British victory at Montreal in 1760. The British now enjoyed complete military control of Canada, and by the Treaty of Paris, February 10, 1863, the French formally ceded to Great Britain all their possessions in North America east of the Mississippi River with the exception of the City of New Orleans.

10. During the course of twenty years of British control of the Upper Mississippi valley (1763-1783), the English merchants intensified their trading activities with the northwestern Indian tribes. Where the French had failed to exploit their opportunities, the British, through the creation of the Northwest Trading Company, established and maintained many large trading and collecting posts, the principal ones being located at Grand Portage, Makinac, Green Bay and Prairie du Chien. Numerous subordinate posts came into existence, and in a short time the Northwest Trading Company enjoyed a virtual monopoly of the Indian trade in this region, having extended its operation into every Sioux and Chippewa village
in western Wisconsin and northern Minnesota.

In spite of the intensive British trading activity, there was no serious attempt at English colonization in Minnesota territory during this period. The only exploration of note to occur in this area was conducted by Jonathan Carver in 1766 and 1767. In November of 1766 Carver managed to reach the Falls of St. Anthony by way of Green Bay, Prairie du Chien and the Mississippi River. From that point he apparently went up the St. Peters or Minnesota River into the territory of the Sioux of the Plains (Tetons). In April of 1767, Carver returned to the mouth of the Minnesota where he accompanied a Sioux burial party to their cemetery at St. Paul.

11. At the beginning of the period of British control the principal villages of the Eastern or Mississippi Sioux, principally the Medawakanton, were still located at "Mille Lac" north of the Mississippi River. These Indians, however, were hunting along both sides of the Mississippi but more extensively to the south and southwest where the adjoining prairies afforded a greater opportunity to bring down the buffalo. They generally rendezvoused at the mouth of the St. Peters or Minnesota River before commencing these summer hunts.

It was during this same period that the mounting pressure from the Chippewa Nations from the North caused the Sioux bands to recede slowly from the northern sections of the Minnesota territory. The Chippewa, or Objibway Nation, of the Algonquin stock were first contacted by the French in the seventeenth century around Lake Huron. These Chippewas in turn were being forced to the west in search of new homes and hunting
grounds by the hostile Iriquois. Thus they had begun to concentrate
around the Lake Superior region near La Pointe, where besides encountering
the French, they were now encroaching upon the Sioux.

By the middle of the eighteenth century the Chippewas had wrested
control of the headwaters of the Chippewa and St. Croix Rivers and were
pushing on to the south and southwest toward the Sandy, Leech, and Red
Lakes. In the face of the Chippewa who, having been indoctrinated in the
use of firearms, now enjoyed a military advantage, the Medawakanton Sioux
finally relinquished their village sites around "Mille Lacs" and relocated
themselves along the east side of the Mississippi River and below the falls
of St. Anthony. By the close of the Revolutionary War the Minnesota
Territory was pretty well divided between the Sioux and Chippewa Nations.

12. With the conclusion of the Treaty of Paris in September 1783,
dominion of that portion of the Minnesota Territory east of the Mississippi
passed to the United States. For the next few years scattered reports
of the traders added very little to movements of the Sioux tribes along
the Upper Mississippi River, except that, consistent with a concentration
of Sioux on the west side of the Mississippi and on the Minnesota River,
there is a definite decrease in Sioux tribal activity on the eastern side.
The Sioux-Chippewa skirmishes continued to play havoc with the traders and
merchants, who repeatedly bent their best efforts to pacify them in order
that they might induce other neighboring tribes to hunt the same areas.

In 1788 Perrault, a Montreal trader, brought Menominee to his trading
post which was then located at the mouth of the Crow Wing River which enters
the Mississippi River from the west a short distance above St. Paul. Perrault also maintained a trading post on the Red Ceder branch of the Chippewa River where he traded with both the Menominee and the Sioux, the latter having journeyed up from the village sites on the Minnesota River.

13. Between 1790 and 1805, there is a scarcity of reliable information that would point to consistent use by the Sioux of any appreciable areas on the east side of the Mississippi. What tribal excursions that did occur, particularly north of the Chippewa River, were conducted primarily as war parties, not hunting expeditions.

When Pike reached the upper Mississippi regions in 1805, he did locate Sioux villages on the west bank of the Mississippi and one on the east side. At the juncture of the Upper Iowa and Mississippi Rivers he located the Wabasha's village, whose occupants had recently lived along the Minnesota River. Further up on the east side of the Mississippi, between the St. Croix and Minnesota Rivers, there was Little Crow's village. Pike located a third village at the mouth of the Cannon River.

Pike also makes specific reference to the Sioux hunting on the lower regions of the Chippewa and St. Croix River, and along the Mississippi north of the Rum River, although as to the latter location the Chippewa were offering a serious challenge. Thus while the Sioux at this time were asserting territorial claims on the east side of the Mississippi from Prairie du Chien to the Crow Wing River, Little Crow's village is the only village of consequence on the east side. The extent of their claims eastward from the Mississippi were quite vague and indeterminate.
14. The subsistence economy of the Sioux tribes of this period indicates a remarkable diversification. These Indians were not limited solely to the fruits of the chase and the barter of furs, hides, and buffalo hides with the white traders, but were adept at utilizing to the fullest extent all the products of nature.

From the swamps and marshes near their village sites at Mille Lacs they gathered wild rice in great abundance. They took fish and waterfowl from the numerous ponds and lakes that dotted the area. In the woodlands they gathered nuts, berries, and fruits. They cut timber too, not just for fuel, but to build good cabins, and other structures, as well as making canoes. Following their general removal from the Mille Lacs area to new sites on the west side of the Mississippi River, they were found engaging in such agricultural pursuits as raising corn, beans, peas, pumpkins, melons, squashes, cucumbers, potatoes, etc. Their ability to enjoy such a variegated economy and to adjust to environmental changes indicates a thorough usage of the land areas they occupied.

15. The early population figures for the Mississippi Sioux could only be estimated and they vary considerably. Pike, who was dealing with the Medawakanton Sioux in 1805, estimates their number at 2100 including about 300 warriors. Lewis and Clark in their statistical report of 1805 fix the Medawakanton at 1200 including 300 warriors. They estimate the combined overall population of the four bands of Mississippi Sioux to be 3100 souls including 850 warriors.
16. By 1805 the Mississippi Sioux were dominating a large area south of Minnesota River and west of the Mississippi. East of the Mississippi River, they were most active in the St. Croix River region, hunting there and on the lakes upstream. Their occupancy of the lower St. Croix region was not seriously challenged by the Chippewa, but the country north of Rum River was a violently disputed area, and the Sioux were compelled to stay close to the river banks less they be attacked. The Sioux did some hunting on the Chippewa River although the general area north of the Chippewa River was pretty much Chippewa country. To the east the Menominee and Winnebago could be found hunting along the Black River.

17. The Commission therefore finds and concludes from all the evidence that, as of the effective date of the 1805 "Pike Purchase" and from time immemorial, the Medawakanton Sioux consistently used and occupied in Indian fashion to the exclusion of other tribes the two tracts described in Commission Findings 5 and 6 herein.

TREATY OF AUGUST 19, 1825
7 Stat. 272

18. In the early 1820's hostilities and war are among the tribes which inhabited the vast midwest region was on the rise. The confederated Sac and Fox in Iowa were in conflict with the Yankton Sioux to the west and northwest, as well as threatening hostilities with the Mississippi Sioux in southern Minnesota. To the north the Chippewas and Mississippi Sioux were still fighting over disputed hunting grounds. Besides bringing untold miseries among the Indians, these internal wars were endangering
lives and property of many white settlers, traders, and travelers who were moving into the general area.

The government thought it best to intervene and end the troubled situation.

19. On March 3, 1825, Congress made an appropriation of $10,400 which monies were intended;

"For defraying the expenses of holding treaties with the Sioux, Chippeways, Menomenees, Sauks, Foxes &c as per estimate of General Clark, for the purpose of establishing boundaries and promoting peace &c between said tribes,..." (4 Stat. 93)

Shortly thereafter General William Clark, and Lewis Cass, who was the Governor of the Michigan territory, were commissioned to treat with various Indian tribes of Mississippi.

20. In August of 1825, General Clark and Governor Cass assembled the Chiefs and representatives of following tribes at Prairie du Chien -- the Sac and Fox Nation, the Iowa, Chippewa, Sioux, Winnebago, Menominee, and the United Chippewa, Ottawa, and Potawatomie. The four bands of Mississippi Sioux were represented, as well as the Teton and Yanktonai. The Yankton and Santee Sioux of the Missouri had been invited but did not attend.

General Clark, after assuring the assembled tribes that the United States was not seeking any of their lands, stated the real purpose of this treaty council as well as the objectives to be accomplished, as taken from the following excerpts of his opening remarks:

"Your Great Father has been informed that war is carried on among his red children. The Sacs, Foxes, and Chippewas
on the one side and the Sioux on the other; and that the wars of some of you, began before any of you now living were born . . .

... "Your Great Father has heard of your war songs and of your war parties. They do not please him. He desires that his red children should bury the Tomahawk and he has sent us here to inform you what are his wishes....

"Your hostilities have resulted in a great measure from your having no defined boundaries established in your country. Your tribes do not know what belongs to them and your people thus follow the game into lands claimed by other tribes.

"This cause will be removed by the establishment of boundaries which shall be known to you and which boundaries we must establish at this council fire.

"We therefore propose to you to make peace together and to agree upon fixed boundaries for your country within which each tribe should hunt and over which others shall not pass without their consent."

21. Thereafter the several tribal leaders and representatives outlined their territorial claims. Because of the overlaps there was considerable disagreement over proposed boundaries. After further negotiations, these conflicts were compromised and certain boundaries were finally agreed upon.

On August 19, 1825, the treaty was concluded between the United States and the Mississippi Sioux, Chippewas, Sac and Foxes, Iowas, Winnebago, Menominee, and a portion of the Ottawa, Chippewa and Pottawatomie tribes. As stated in the preamble the treaty was concluded in order,

"... to promote peace among these tribes, and to establish boundaries among them and the other tribes who live in their vicinity and thereby to remove all causes of future difficulty. . . ."

22. Article 2 of the 1825 Treaty established the boundary between the respective countries of the Mississippi Sioux and the Sac and Fox
Nations in the following manner:

"It is agreed between the Confederated Tribes of the Sacs and Foxes and the Sioux, that the line between their respective countries shall be as follows: Commencing at the mouth of the Upper Ioway River, on the West bank of the Mississippi, and ascending the said Ioway River to its left fork; thence up that fork to its source; thence crossing the fork of Red Cedar River, in a direct line to the second or upper fork of the Desmoines river; and thence in a direct line to the lower fork of the Calumet river; and down that river to its juncture with the Missouri River. . ."

In an effort to avoid any future difficulty with the Yankton Sioux who were not present, and who may have an interest in the determination of the western terminus of the Article 2 line, it was provided further therein that,

". . . the line from the forks of the Desmoines to the forks of the Calumet river, and down that river to the Missouri, is not to be considered as settled until the assent of the Yankton band shall be given thereto. . ."

23. Pursuant to Article 5 of the treaty, it was agreed between the Sioux and Chippewas that the line between their respective countries should be drawn as follows:

". . . commence at the Chippewa River, half a day's march below the falls; and from thence it shall run to Red Cedar River, immediately below the falls; from thence to the St. Croix river, which it strikes at a place called the standing cedar, about a day's paddle in a canoe, above the lake at the mouth of that river; thence passing between two lakes called by the Chippewas 'Green Lakes,' and by the Sioux 'The Lakes they bury the Eagles in,' and from thence to the standing cedar that 'the Sioux split'; thence to Rum River, crossing it at the mouth of a small creek called choaking creek, a long day's march from the Mississippi; thence to a point of woods that projects into the prairie, half a day's march from the Mississippi; thence in a straight line to
the mouth of the first river which enters the Mississippi on its west side above the mouth of Sac River; thence ascending the said river (above the mouth of Sac River) to a small lake at its source; thence in a direct line to a lake at the head of Prairie river, which is supposed to enter the Crow Wing River on its South side; thence to Otter-tail lake Portage; thence to said Otter-tail lake, and down through the middle thereof, to its outlet; thence in a direct line, so as to strike Buffalo River, half way from its source to its mouth, and down the said river to Red River; thence descending Red River to the mouth of Outard or Goose creek. . ."

The eastern boundary line of the Sioux country was fixed as follows:

"... commences opposite the mouth of Ioway river on the Mississippi, runs back two or three miles to the bluffs, follows the bluffs, crossing Bad Axe river, to the mouth of Black river, and from Black river to half a day's march below the Falls of the Chippewa River."

24. Under Article 10 of the treaty the participating tribes acknowledged the supremacy of the United States and in return,

"... the United States agree to, and recognize the preceding boundaries, subject to the limitations and restrictions before provided. . ."

25. The Commission finds that the 1825 Prairie du Chien treaty was a treaty of recognition, and that it accorded to the treaty participants permanent rights of occupancy to the landed areas belonging to them and located within the fixed treaty lines. Insofar as the Mississippi Sioux bands are concerned, they have a valid recognized title to those areas claimed by them which lie within those boundary lines as described in Article 2 and Article 5 of the 1825 treaty. See, Otoe and Missouri Tribe of Indians et al., v. United States, 5 Ind. Cl. Comm. 317; The Sac and Fox Tribe of

26. The Prairie du Chien Treaty did not settle with finality all of the boundary lines between competing tribes. For example, the representatives of the Menominee were ill prepared to acquaint the treaty commissioners with the extent of their territorial claims and the Yankton Sioux never showed up at the council proceedings. Specific provision was made by Article 8 of the treaty to take care of the Menominee problem. Article 11 of the treaty provided for the holding of a treaty council with the Yankton band of Sioux during the year 1826.

"... to explain to them the stipulations of this treaty, and to procure their assent thereto, should they be disposed to give it, ...".

However, the government did not treat with the Yankton Sioux during the year 1826, and it was not until 1830, at the conclusion of the second treaty at Prairie du Chien, that any serious attempt was made to secure by separate proceedings the Yankton Sioux assent to the 1825 Article 2 line.

THE TREATY OF JULY 15, 1830
7 Stat. 328
Royce Areas 151, 153

27. For the first few years following the conclusion of the 1825 Prairie du Chien treaty, the Indian agents reported very little warlike activity from the Indians. However, in 1829, the few isolated border incidents that had occurred previously between the Sac and Fox and Sioux began to increase in number, and it was feared that this would eventually
lead to open warfare. This increased agitation between the two tribes was attributed in part to the government's failure to adjust finally the western segment of the 1825 Article 2 line as between the Yankton Sioux and the Sac and Fox. The Sac and Fox hunting parties were extending their operations further into Sioux territory as well as upon territory claimed by the Otoes, and Omahas. The Iowas were also asserting claims in this same area along the Missouri River.

28. To put an end to these disputes, the Government decided that it must assemble the interested tribes and conclude a peace treaty among them. It would then seek to purchase the disputed area from them for the purpose of turning it into a common hunting ground. General Clark was commissioned to treat with these Indians and to carry out these objectives. On July 7, 1830 there were assembled at Prairie du Chien deputations from the Sacs, Foxes, Ioways, Menominees, Mississippi Sioux, Winnebagoes, Omahas, Otoes, and Missourias. The Yankton Sioux were not represented.

29. On July 10, 1830, a proposed treaty of peace and friendship was concluded and signed by representatives of the assembled tribes.

Article 2 of the proposed treaty of peace called for reestablishment of,

"... the boundary line between the confederated tribes of the Sacs and Foxes, and the Sioux as agreed upon by the 2nd article of the treaty made at Prairie du Chien, in the Territory of Michigan, on the nineteenth day of August one thousand and eight hundred and twenty five, ... according to the provisions of said article."

Article 3 of this agreement made provision for the absent Yankton
and Santee bands of Sioux, who were "materially interested in the line from the forks of the Desmoine river to the Missouri," to meet with representatives of the Sac and Fox at St. Louis at a later date in order to settle the boundary line between their respective countries. Under Article 4 it was agreed that when the Yankton and Santee bands of Sioux signed the treaty they would be considered parties thereto and bound by all its stipulations.

Pursuant to the 3rd article of the agreement the Yankton and Santee bands of Sioux met with representatives of the Sac and Fox tribe at St. Louis on October 13, 1830, and having settled all differences, they signed the agreement.

30. On July 15, 1830, the United States concluded a treaty of cession with the assembled tribes. Under Article I the following lands were ceded by all the tribes:

"The said Tribes cede and relinquish to the United States forever all their right and title to the lands lying within the following boundaries, to wit: Beginning at the upper fork of the Desmoine River, and passing the sources of the Little Sioux and Floyds Rivers, to the fork of the first creek which falls into the Big Sioux or Calumet on the east side; thence, down said creek, and Calumet River to the Missouri River; thence down said Missouri River to the Missouri State line, above the Kansas; thence along said line to the northwest corner of the said State, thence to the high lands between the waters falling into the Missouri and Desmoines, passing to said high lands along the dividing ridge between the forks of the Grand River; thence along said high lands or ridge separating the waters of the Missouri from those of the Desmoine, to a point opposite the source of Boyer River, and thence in a direct line to the upper fork of the Desmoine, the place of beginning. . . ."

31. Only that part of Royce Area 151 north of the 1825 Article 2 line (also referred to as the "Sioux-Sac and Fox line" or "Yankton Sioux line"),
is the subject of any claims asserted herein. The Mississippi Sioux have now abandoned any claim which they may have to this area. Consistent with the position now taken by the Mississippi Sioux petitioners, the evidence in the record shows that they had no interest in Royce Area 151 based upon use and occupancy or upon recognized title. Accordingly, the claim asserted by the Medawakanton and Wahpakoota bands of Mississippi Sioux for Royce Area 151 in Docket 359 will be dismissed. At trial, the petitioner, the Yankton Sioux Tribe, in Docket 332-A has asserted good title to the entire area north of the Article 2 line as of the date of the 1830 Treaty of Cession.

By its order of November 25, 1958, the Commission fixed the location of the western segment of the 1825 Article 2 line as beginning at the upper fork of the Desmoines River, and terminating at the mouth of Rock River which flows from the east to the Calumet or Big Sioux River. The Commission adopts the same position in this case with respect to the location of the western terminus of the 1825 Article 2 line.

32. Under Article 3 of the 1830 Treaty, the following land cession was made exclusively by the four bands of Mississippi Sioux.

"Article III. The Medawah-Kanton, Wah-pa-coota, Wahpeton and Sisseton Bands of the Sioux cede and relinquish to the United States forever, a Tract of Country twenty miles in width, from the Mississippi to the Desmoine River, situate north and adjoining the line mentioned in the preceding article."

The land thus ceded comprises about two million acres in northern Iowa and is officially designated as Royce Area 153. The Mississippi Sioux were the exclusive owners as of the effective date of the cession, they having recognized title thereto by virtue of the 1825 Prairie du Chien Treaty. Only the Medawakanton and Wahpakoota bands are asserting claims
33. On December 30, 1830, President Andrew Jackson forwarded to the Senate of the United States the two proposed treaties under the following message:

"I submit to the consideration of the Senate two treaties one of peace and the other of cession, concluded at Prairie du Chien on the 10th and 15th of July 1830, by Commissioners duly authorized on the part of the United States and by deputations of the confederated tribes of Indians residing on the upper Mississippi."

The Senate failed to ratify the July 10th treaty of peace, but did ratify the July 15th treaty of cession on February 15, 1831. President Jackson proclaimed the latter on February 24, 1831 (7 Stat. 328).

TREATY OF SEPTEMBER 29, 1837
Royce Area 243

34. On September 21, 1837, representatives of the United States and a deputation of chiefs and braves from the Medawakanton bands of Mississippi Sioux, accompanied by their agent Major Lawrence Taliaferro, opened treaty negotiations at Washington, D. C. for the purchase by the Government of all the Sioux lands east of the Mississippi River. On the 29th of September an agreement was reached, and a treaty was signed whereby as stated in Article I of said treaty;

"The chiefs and braves representing the parties having an interest therein, cede to the United States all their land, east of the Mississippi river, and all their islands in the said river." (7 Stat. 538)

This area, comprising all of the lands owned by the Mississippi Sioux east of the Mississippi, contains about 5 million acres in west central
Wisconsin and east central Minnesota. It is circumscribed by the boundary line as set forth in Article 5 of the 1825 Prairie du Chien Treaty and is officially identified as Royce Cession 243.

35. The Commission finds that as of the effective date of the 1837 Treaty of cession the Mississippi Sioux and in particular the Medawakanton band had a recognized title to the subject lands east of the Mississippi by virtue of the 1825 Prairie du Chien Treaty. The Commission also finds that the eastern boundary line of the Sioux lands east of the Mississippi as described in Article 5 of the 1825 Prairie du Chien Treaty is not accurately depicted in Royce Area 243 on the map Wisconsin 1, 18th Annual Report, Bureau of American Ethnology (1896-'97), Part II.

That segment of the line, which bounds the Sioux lands on the east and commences at "the mouth of Black River", follows a straight line "from Black River to half a day's march below the Falls of the Chippewa River." The language is clear and unambiguous in this regard.

The eastern boundary line of the Sioux lands terminates at that point where the Article 5 Sioux-Chippewa boundary line commences, moving to the west, and where the Article 6, Chippewa-Winnebago line begins moving to the east.

36. The Commission concludes that the Mississippi Sioux do not have recognized title by virtue of the 1825 Prairie du Chien Treaty, or any other treaty, as of the effective date of the 1837 Treaty of cession, to that area between the eastern boundary of the Sioux lands as described above and as set forth in Article 5 of the Prairie du Chien Treaty and the Black River south of that segment of the Chippewa Winnebago line as described in Article 6 of the 1825 Prairie du Chien Treaty, which
commences,

"... on the Chippewa River aforesaid, half a day's march below the falls on that river, and run thence to source of Clear Water river, a branch of the Chippewa thence south to Black River, ..." (Art. 6, 7 Stat. 272)

In the case of The Winnebago Tribe and Nation of Indians et al., v. The United States, 8 Ind. Cl. Comm. 78, this Commission found that the Black River constituted a part of the western boundary line of a sizeable area of land to which the Winnebago Indians by virtue of the 1825 Prairie du Chien Treaty had recognized title.

37. In those years leading up to the 1837 Treaty of cession the evidence of exclusive Sioux use and occupancy in the Black River area east of the line from the mouth of the Black River to that point a half a day's march below the Chippewa Falls is far from convincing. There were no Sioux village sites in this area, nor had any other Indian tribes been reported in occupancy therein. By 1832 the Winnebago were being more readily identified with the Black River area, as they were now freely hunting the entire length of Black River and had apparently established a village south of Black River on the east side of the Mississippi River near La Crosse, Wisconsin. The Menominee Indians also had access and use of the Black River area.

The value of those lands east of the Mississippi and west of Black River lay in the large spread of timber. The Sioux interest in this regard appears to be centered in the lumber mills on the Red Cedar or Menominee River, a branch of the Chippewa River, which is located west of the area in question within the lands recognized as belonging to the
Sioux. The game had been nearly depleted in this area east of the Mississippi River.

Although the Sioux Chief, Wabasha, made generous the territorial claims of the Medawakantons east of the Mississippi River at the time of the 1825 Prairie du Chien Treaty, the Commission, from all the evidence, is in general agreement with and adopts as its findings the conclusions reached by the petitioners' expert witness, Dr. Wallace, with respect to Sioux use and occupancy of this Black River area, and who testified as follows:

"However, apart from this I can't find any evidence to support the presence of Sioux for hunting purposes on the two of three main streams which flow through the part of 243 east of the Chippewa.

"As for the Black River, at least in the 1830's there was a Winnebago village near the mouth of the Black, approximately at LaCrosse, Wisconsin, and Winnebago are described as hunting up the Black River in 1832, and Black Hawk and Sac and Fox, who certainly would have wished to avoid meeting the Sioux, fled up the Black River from the battle of Bad Axe.

"So I would infer from this he would not expect to meet Sioux on the Black River."

And further:

"What this, I think leads to, is that granting the difficulties of interpreting the significance of the treaties and the difficulty of evaluating the statements of Pike and Keating, which are vague, and Wabasha in the treaty, while it is quite easy to demonstrate the presence of Medawakanton west of the line from the starting point at the Sioux-Chippewa line on the Chippewa River to the mouth of the Black River, and while it is quite possible to show that the Sioux used a strip on the immediate east bank of the Mississippi, it is not possible to demonstrate the presence of Sioux either in the
form of villages or for the purpose of hunting
east of a line roughly from the middle of the Black
to the specified point on the Chippewa. In fact,
it is possible to locate Winnebago on the Black
River." (Tr. p. 100-102)

38. The Commission finds and concludes from the evidence that the
Medawakanton band of Mississippi Sioux did not have Indian title to any
part of this area east of a line beginning at the mouth of the Black River
and terminating at that point a half day's march below the Chippewa Falls,
as of the effective date of the Treaty of September 29, 1837, 7 Stat. 538.

THE TREATY OF TRAVERSE DES SIOUX OF JULY 23, 1851, 10 Stat. 949;
and THE TREATY OF MENDOTA OF AUGUST 5, 1851, 10 Stat. 954.
Royce Cession 289

39. On April 9, 1849, the Territory of Minnesota was officially
organized. In the twelve years that had elapsed since the Sioux lands east
of the Mississippi River were thrown open for settlement, a major portion
of the white population of Minnesota had gravitated to the towns of St.
Paul, Stillwater, and St. Anthony. Neighboring Wisconsin had already
attained statehood the year before. The tide of eastern emigration had
grown stronger, as it moved steadily to the west. Thus it was that the
vast expanse of Sioux country lying immediately west of the Mississippi
was eagerly coveted. The demands for the extinguishment of the Indian title
therefor were now being heard in Congress with a stronger voice. Under the
Act of September 30, 1850, there was appropriated $15,000 "for expenses
of treating with the Mississippi and St. Peter Sioux, for extinguishment
of their title to lands in Minnesota territory. . ." In July of the following year preparations were made for the signing of the first of two Sioux treaties which would cede all their right, title, and interest to lands in Minnesota and Iowa.

40. On July 18, 1851 at Traverse des Sioux, near Mankato, a treaty council was convened with the Sisseton and Wapetons who comprised the Upper Sioux. After five days of negotiations a treaty was concluded and signed by the United States and the Chiefs and headmen of the two bands by which there was ceded to the United States the following lands as described in Article 2 of the Treaty.

"The said See-see-toan and Wah-pay-toan bands of Dakota or Sioux Indians, agree to cede, and do hereby cede, sell, and relinquish to the United States, all their lands in the state of Iowa; and, also all their lands in the Territory of Minnesota, lying east of the following line, to wit: Beginning at the junction of the Buffalo River with the Red River of the North; thence along the western bank of said Red River of the North, to the mouth of the Sioux Wood River; thence along the western bank of said Sioux Wood River to Lake Traverse; thence, along the western shore of said lake, to the southern extremity thereof; thence in a direct line, to the junction of Kameska Lake with the Tchan-kas-an-data, or Sioux River; thence along the western bank of said river to its point of intersection with the northern line of the State of Iowa; including all the islands in said rivers and lake."

As consideration for this cession, the United States agreed under Article 4 of the treaty to pay to these Indians the sum of $1,665,000.

41. As originally drafted, Article 3 of the proposed treaty reserved from the ceded area unto the Sisseton and Wahpeton bands a tract of land containing about 1,120,000 acres, described as follows:
"... all that tract of country on either side of the Minnesota River, from the western boundary of the lands herein ceded, east, to the Tchay-tam-bay River on the north, and to Yellow Medicine River on the south side, to extend, on each side, a distance of not less than ten miles from the general course of said river; the boundaries of said tract to be marked out by as straight lines as practicable, ..."

In considering the treaty, the Senate struck out the above provision for the reservation and in lieu thereof agreed:

"... to pay the Sioux bands of Indians, parties to this treaty, at the rate of ten cents per acre, for the lands included in the reservations provided for in the third article of the treaty as originally agreed upon ..."

It was also provided in the supplemental article to the treaty that at some future date, and with assent of the Indians, the President would be authorized to set apart outside of the limits of the ceded area, suitable tracts of lands for their use and occupancy as a permanent home.

42. About two weeks later, on August 5, 1851, at Mendota, Commissioners Lea and Ramsey, concluded a substantially similar treaty with Medawakanton and Wahpakoota bands, comprising the lower Mississippi Sioux, whereby under Article 2 of said treaty,

"The said Med-ay-wa-kan-toan and Wah-pay-koo-tay bands of Indians do hereby cede and relinquish all their lands and all their right, title and claim to any lands whatever, in the Territory of Minnesota, or in the State of Iowa."

In consideration of said cession to the United States, Article 4 of the treaty provided for the payment of $1,410,000.

43. As was the situation in the treaty concluded with the upper Sioux bands, Article 3 as originallydrafted reserved an area of some 690,000 acres from the ceded area as a permanent home for the lower Sioux
bands. This tract extended along both sides of the Minnesota River and was adjacent to the reservation which had been contemplated for the upper Sioux bands. The Senate struck Article 3 from the treaty and substituted in lieu an agreement to purchase the said tract for ten cents an acre. It was also stipulated in the supplemental Article to the treaty that the President would be authorized at a future date with the assent of the Indians, to select suitable tracts of land without the ceded area for a permanent home.

44. By concluding the two treaties of 1851 with the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux, the United States effectively extinguished the title of said Indians to these lands in the Minnesota and Dakota territories and the State of Iowa. The ceded lands total approximately 24 million acres, and said area is officially designated as Royce Cession 289. The boundaries of Royce Cession 289, as depicted on maps Minnesota 1 and Iowa 1, and Dakota 1, 18th Annual Report, Bureau of American Ethnology (1896-'97), Part II, fall within that vast area which was delimited by lines fixed under Articles 2 and 5 of the 1825 Prairie des Chien Treaty, 7 Stat. 272, and, which area (with the exception of the military reservation at St. Peters) was recognized by the United States under the said treaty as belonging to the four bands of Mississippi Sioux. The Commission therefore finds that, as of the effective dates of the 1851 Treaty of Traverse des Sioux and the 1851 Treaty of Mendota, the four bands of Mississippi Sioux had recognized title to Royce Cession 289.
45. Following the conclusion of the 1851 Treaties of cession, the Mississippi Sioux bands remained upon the ceded area while the government sought to obtain the Indians' assent to the proposed treaty amendments that would eventually locate them on reservations without the limits of the ceded lands. To gain their assent certain government officials were giving the Indians tacit assurances that in all probability the President would allow them to remain for a term of years upon the tracts originally reserved under the two 1851 treaties. Late in 1852, the Sioux bands assented to the treaty amendments, and thereafter on April 12, 1854, President Pierce, informally approved the recommendation of his Secretary of Interior which would permit the Indians to occupy permanently the lands upon which they were now located until such time as the President should deem it proper to relocate them.

Sioux title to the reservation was still of doubtful validity. In order to alleviate the difficulty, Congress enacted into the Indian Appropriation Act of July 31, 1854 (10 Stat. 315) the following provision with respect to the Mississippi Sioux,

"That the President be authorized to confirm to the Sioux of Minnesota, forever, the reserve on the Minnesota River now occupied by them, upon such conditions as he may deem just."

It appears, however, that the President took no executive action under this authority.
46. Recognition of the increasing demands of the settlers for additional lands brought about the treaty negotiations in the summer of 1858 leading to the cession of that part of Mississippi Sioux reservation on the north side of the Minnesota River. On June 19, 1858 the chiefs and headmen of the Medawakanton and Wahpakoota Sioux bands concluded a treaty of cession with the United States at Washington, D. C. (12 Stat. 1031). Under Article IV of the said treaty the reservation lands lying south and southwestwardly of the Minnesota River were confirmed unto said bands as a reservation (Royce Area 440), Minnesota 1, 18th Annual Report, Bureau of American Ethnology, 1896-'97, Part II).

In providing for disposition of the land on the north side of the Minnesota River, Article II of said treaty took notice of the fact that the President had not acted to confirm the reservation to the Indians as authorized by the Act of July 31, 1854. It therefore contained the following language:

"It is agreed and stipulated that the question shall be submitted to the Senate for decision whether they have such title; and if they have, what compensation shall be made to them for that part of said reservation or tract of land lying on the north side of the Minnesota River -- whether they shall be allowed a specific sum of money therefor, and if so, how much; or whether the same shall be sold for their benefit, they to receive the proceeds of such sale, deducting the necessary expenses incident thereto."

47. By the Senate Resolution of June 27, 1860 (12 Stat. 1042), it was resolved,

"that said Indians possessed a just and valid right and title to said reservations, and that they be allowed the
sum of thirty cents per acre for the land contained in that portion thereof lying on the north side of the Minnesota River, exclusive of the cost of survey and sale, or any contingent expense that may accrue whatever, which by the treaties of June, 1858, they have relinquished and given up to the United States."

That part of the Sioux reservation north of the Minnesota River which was confirmed unto the Medawakanton and Wahpakoota bands by the above resolution and ceded by them under the 1858 treaty, is officially designated as Royce Area 413. (Minnesota 1, Bureau of American Ethnology, 1896-'07, Pt. II).

THE ACT OF FEBRUARY 16, 1863
12 Stat. 652

48. After ceding all of their reservation on the north side of the Minnesota River under the treaties of June 19, 1858 (12 Stat. 1031; 12 Stat. 1037), the four bands of Mississippi Sioux retired to the 10-mile tract extending along the south side of the river. The Sisseton and Wahpeton, or upper Sioux occupied the upper half, while the Medawakanton and Wahpakootas, or lower Sioux, lived on the lower half. Altogether there were some 6200 Indians now confined to the reservation. In August of 1862, members of the lower Sioux broke out of the reservation and embarked on a murderous rampage through the neighboring settlements, killing and wounding many of the whites and laying waste the country side. It was not until the spring of 1863 that the military forces managed to suppress the uprising. Many of the lower Sioux had been captured or surrendered, and most of the upper Sioux fled to the northwest and up into Canada.
49. As a result of this outbreak, Congress took punitive measures against the rebellious Sioux bands by passing the Act of February 16, 1863, (12 Stat. 652), entitled "An Act for the Relief of Persons for Damages Sustained by Reason of Depredations and Injuries by Certain Bands of Sioux Indians."

Besides calling for the payment of damages sustained by the settlers out of any funds belonging to said bands then in the hands of the Government, Section 1 of the Act contained the following provision:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that all treaties heretofore made and entered into by the Sisseton, Wahpaton, Medawakanton, and Wahpakoota Bands of Sioux or Dakota Indians or any of them, with the United States are hereby declared to be abrogated and annulled so far as said treaties or any of them purport to impose any future obligation on the United States and all lands and rights of occupancy within the state of Minnesota and all annuities and claims heretofore accorded to said Indians or any of them to be forfeited to the United States."

As of the effective date of the 1863 Forfeiture Act, the Mississippi Sioux lands in Minnesota subject to forfeiture consisted of the reservation on the south side of the Minnesota River. The tract is officially designated as Royce Area 440.

50. In conjunction with the 1863 Forfeiture Act, Congress took further legislative steps with respect to the Mississippi Sioux. The Act of March 3, 1863, 12 Stat. 819, entitled "An Act for the Removal of the Sisseton, Wahpaton, Medawakanton, and Wahpakoota Bands of Sioux or Dakota Indians, and for the Disposition of their Lands in Minnesota and Dakota," authorized the President to set aside a stretch of unoccupied agricultural land without...
the limits of any state of sufficient size to accommodate upon individual 80-acre tracts those members of the Mississippi Sioux who are willing to engage in agricultural pursuits. The Minnesota reservation lands were to be surveyed, appraised, and open for public sale, and the proceeds therefrom to be invested by the Secretary of the Interior for the benefit of those Indians in their new homes in assisting them in the agricultural pursuits.

51. After considering the language of the 1863 Forfeiture Act, its legislative history as evidenced in the Congressional debates preceding its enactment, and upon review of the applicable judicial decisions the Commission finds that said Act intended to abrogate and forfeit all the present and future Sioux rights and government obligations arising out of the then existing treaties. The immediate effect of the Act was to cut off all Sioux annuities. The Commission finds further that it was not the Congressional intention to disturb, alter, or resurrect past performances and completed treaty acts wholly or in part. Viewed in the light of the claims asserted herein by the Mississippi Sioux, which claims arise as the result of an act completed without further obligation under treaties anti-dating 1863, this Commission finds that the Forfeiture Act is ineffective as a bar to the right of the petitioners to present the instant claims under the provisions of the Indian Claims Commission Act. What is more important, the 1863 Act does not deprive the Commission of its jurisdiction to hear and adjudicate said claims.
The original petition filed by the Yankton Sioux on August 10, 1951 under Docket No. 332 contained two general claims. The first was a two fold claim in which the petitioner was asking for additional compensation for lands taken by the United States on July 23, and August 5, 1851, and for lands ceded to the United States under the Treaty of April 19, 1858 (11 Stat. 743). The second claim was for a general accounting. Thereafter a severance was ordered, and on February 12, 1958, the petitioner filed an amended petition setting forth only the land claims. This petition is docketed as 332-A. The accounting claim is now carried as Docket No. 332-B and is of no concern with respect to the present action.

In paragraph 8 (b) of the petition in Docket 332-A there is a vague Yankton Sioux statement that these Indians, jointly with other Sioux bands or tribes, "owned or occupied certain portions of lands" within an enormous area encompassing a goodly part, if not all, of the states of Missouri, Iowa, and Minnesota, as well as parts of South Dakota and Wisconsin. There then follows a specific claim for lands within Royce Area 289 which claims are in conflict with those interests asserted by the Mississippi Sioux bands in Dockets 142 and 362. However, on June 26, 1958, and in support of the motion of the Mississippi Sioux, the Commission ordered the consolidation for trial of Docket 332-A with Dockets 142, 359 through 363, "to the extent that the petition in Docket 332-A claims any of the land claimed in the petitions filed in Dockets 142, 359 through 363."
Upon the representations of both the Yankton Sioux and the Mississippi Sioux the Commission included the following observation in its order of September 2, 1959, entitled "Order Vacating the Commission's Order of August 18, 1959, and Granting Extension of Time for Filing Findings of Fact and Brief Relating to Royce Area 151."

"... and it having been represented by petitioners in Docket No. 359 that they do not appear to have any interest in Royce Area 151, and by petitioners in Docket No. 332-A that it does not appear to have any interest in any of the cession in Docket Nos. 142, 359 through 363 except Royce Area 151 in Docket No. 359."

The apparent effect of the above was to eliminate the possible overlaps between the respective petitioners. The Commission, however, is inclined to adjudicate the respective overlapping claims on their merits and under the consolidated position in which this entire matter now stands before the Commission for decision.

The Commission makes the following findings of fact:

52. The petitioner, the Yankton Sioux Tribe or Band of Indians, is an identifiable group of American Indians maintaining a tribal organization recognized by the Secretary of the Interior as having the authority to represent that tribe. As such the petitioner tribe is authorized to present this suit under the provisions of the Indian Claims Commission Act for and in behalf of all its members.

53. The amended petition of the Yankton Sioux sets forth two specific claims to land. (a) In paragraphs 9 through 12 of the petition the
Yankton Sioux claim a compensable interest in Royce Area 289, which area was ceded to the United States by the four Mississippi Sioux bands under the Traverse des Sioux Treaty of July 23, 1851 (10 Stat. 949) and the Mendota Treaty of August 5, 1851 (10 Stat. 954). The Yankton Sioux did not participate in either of the aforesaid treaties of cession. The Yankton Sioux contend that, subsequent to ratification of said treaties, the United States assumed absolute control of the ceded area, and disposed of the same without compensating the Yankton Sioux for their alleged interest in Royce Area 289, all to the damage of petitioner tribe. (b) In paragraphs 13 through 17 the petitioner tribe sets down a claim for additional compensation for lands ceded under Article 1 and Article 2 of the Treaty of April 19, 1858 (11 Stat. 743), which articles read in part as follows:

Article 1. The said chiefs and delegates of said tribe of Indians do hereby cede and relinquish to the United States all the lands now owned, possessed, or claimed by them, wherever situated, except four hundred thousand acres thereof, situated and described as follows . . . (Royce Area 411)

. . . They, also, hereby relinquish and abandon all claims and complaints about or growing out of any and all treaties heretofore made by them or other Indians, except their annuity rights under the Treaty of Laramie of September 17, A.D. 1851.

Article 2. The land so ceded and relinquished by the said chiefs and delegates of the said tribe of Yanktons is and shall be known and described as follows to wit:

Beginning at the mouth of the Tchan-kas-an-data or Calumet or Big Sioux River; thence up the Missouri River to the mouth of the Pa-hah-wa-kan or East Medicine Knoll River; thence up said river to its head; thence in a direction to the head of
the main fork of the Wan-dush-kah-for or Snake River; thence down said river to its junction with the Tchan-san-san or Jaques or James River, thence in a direct line to the northern point of Lake Kaneska, thence along the northern shore of said lake and its outlet to the junction of said outlet with the said Big Sioux River; thence down the Big Sioux River to its junction with the Missouri River."

The lands bounded and described in Article II above constitute approximately 11,000,000 acres and are officially designated as Royce Area 410. As such, the area is outside of and west of any of the land claims of the Mississippi Sioux bands asserted in Dockets 142, 359 through 363, and is not involved in the consolidated actions herein.

54. Prior to the 1851 Traverse des Sioux and Mendota treaties with the Mississippi Sioux, and the Treaty of April 19, 1858, the Yankton Sioux had ceded to the United States all right, title, and interest to lands east of the Big Sioux River.

(a) On July 15, 1830, the United States concluded a treaty of cession at Prairie des Chien with the four bands of Mississippi Sioux, and the Omahas, Iowas, Ottoes, and Missouri bands of Indians, whereby said tribes among other things, ceded all their right, title, and interest to Royce Area 151 (Article 1, 7 Stat. 328). Since the Yankton were not present at the treaty proceedings, Article VI contained the following provision,

The Yanckton and Santie Bands of the Sioux not being fully represented, it is agreed, that if they shall sign this Treaty, they shall be considered as parties thereto, and bound by all its stipulations.

Thereafter, on September 4, 1830, the Yankton and Santee bands of Sioux
affixed their signatures to the treaty and became bound by all its stipulations.

(b) On October 21, 1837, the United States concluded a further treaty of cession with the chiefs and headmen of the Yankton Sioux with respect to Royce Area 151 whereby said tribe in consideration of $4,000 agreed to the following under Article 1 of said treaty,

The Yankton tribe of Sioux Indians cede to the United States all the right and interest in the land ceded by the treaty, concluded with them and other tribes on the fifteenth of July, 1830, which they might be entitled to claim by virtue of the phraseology employed in the second* article of said treaty. (Art. 1, 7 Stat. 542).

By virtue of the treaties of July 15, 1830 and October 21, 1837, the Yankton Tribe effectively and without qualification ceded all their right, title, and interest of whatever nature to Royce Area 151.

55. The Commission finds that the petitioner, the Yankton Sioux, has failed to set forth in a petition, duly filed before this Commission within the five year period prescribed in section 12 of the Indian Claims Commission Act (60 Stat. 1052), any claim or claims for Royce Area 151 arising out of or based upon the treaties of July 15, 1830 and October 31, 1837. The statutory requirements in section 12 of the Indian Claims Commission Act are a positive limitation on the right to bring the action. Consequently any Yankton Sioux cause of action involving Royce Area 151 founded upon the aforementioned treaties of 1830 and 1837 has now been extinguished by operation of law, and this Commission is at this time without jurisdiction

* Should read "first"
to grant the petitioner any relief upon its claim for Royce Area 151.

56. The Commission further finds that the petitioner, the Yankton Sioux tribe, has voluntarily relinquished any further aboriginal claims to Royce Area 289, and has not introduced any evidence in support of Yankton Sioux use and occupancy within that area. The evidence in the record does not support Yankton Sioux aboriginal claims to those lands east of the Big Sioux River within the area claimed by the Mississippi Sioux in Dockets 142 and 362 and is therefore consistent with the position now taken by the Yankton Sioux in disclaiming any further interest in Royce Area 289.

57. The evidence in the record clearly demonstrates to the Commission the general movement and geographical location of the Yankton Sioux from the time they were first contacted by the early explorers and traders, and carrying through the periods relative to claims asserted herein.

As early as 1708 Le Seur, the French explorer contacted the Yanktons along the east bank of the Missouri River. For the next hundred years, little if anything is known about the history of these Indians, until again mentioned by Lewis and Clark in 1804. Apparently they had remained relatively stationary over the years, as they are described as roaming over the area of the James, Big Sioux and Des Moines River. Lewis specifically places them on the James, Big Sioux, Floyd, and Des Moines River, and in the area encompassing the Pipe Stone quarries in the extreme western portion of Minnesota. At this time the Yanktons, along with the Yanktonais, and Tetons bands constituted the western segment of the Sioux Nation, and
were more commonly known as the Missouri Sioux, as distinguished from the Mississippi Sioux or eastern Sioux. Thereafter the Yanktons became more readily identified with the general area between the Big Sioux and Missouri River in Dakota Territory, but did in fact range northward as far as the headwaters of the Red River. They frequented the Missouri River and dealt with the traders there. By the middle 1850's they were living along the Vermillion River in South Dakota. While the Yanktons hunted east of the Missouri River, there are no indications that they ever established village sites east of the Big Sioux River, at least in any of the areas more readily identified with their eastern cohorts the Mississippi Sioux. When the Minnesota outbreak erupted in 1862, the Yankton Sioux judiciously refrained from joining forces with the hostile Mississippi Sioux.

58. Based upon all the evidence in the record, the Commission finds and concludes that the petitioner, Yankton Sioux, has failed to establish any compensable interest in Royce Area 289, either prior to or as of the effective date of the 1851 treaties of Mendota and Traverse des Sioux, and therefore the said Yankton Sioux claim as set forth in paragraphs 9 through 12 of the petition herein should be disallowed and dismissed.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner concurring in all but Finding No. 55. See separate opinion.