

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

Appearances:

Docket No. 142 - Marvin J. Sonosky;  
Docket Nos. 359-363 - Emerson Hopp,  
John S. White, Louis Rochmes;  
Docket No. 332-A - Ernest L. Wilkinson,  
and John W. Cragun, Attorneys  
for Petitioners.

James J. Monogue, with whom was Mr.  
Assistant Attorney General Ramsey  
Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

There are five principal Sioux claimants in this consolidated matter who are seeking additional compensation for lands allegedly taken by the United States by treaty or otherwise. In Dockets 359 through 363, there are set forth the claims of the Medawakanton and Wahpakoota bands of Sioux, and Docket 142 embodies the claim of the Sisseton and Wahpeton bands of Sioux. Collectively these four bands are more readily identified as the

Mississippi Sioux. Docket 332-A involves the claims of the Yankton Sioux tribe, who along with the Yanktonai and Teton Sioux tribes, are known as the Missouri Sioux. The subject areas in the respective dockets are contiguous. They have a combined acreage in the neighborhood of some thirty five million acres, and are located for the most part in the state of Minnesota with some areas extending into Wisconsin and Iowa.

With respect to Medawakanton and Wahpakoota claims asserted in Dockets 359 through 363, there are five separate petitioning Indian communities, to-wit, the Santee Sioux Tribe of the Santee Reservation in Nebraska, the Flandreau Santee Sioux Tribe of South Dakota, the Lower Sioux Indian Community in Minnesota, the Prairie Island Indian Community in Minnesota, and the Upper Sioux Indian Community in Minnesota. Their present membership is comprised chiefly of descendants of the original bands of Medawakanton and Wahpakoota bands of Mississippi as they existed during the times pertinent to the claims asserted herein. There are also several individual petitioners who are blood descendants of the original members of the Medawakanton and Wahpakoota Sioux bands. These five communities are entitled to bring and maintain the Medawakanton and Wahpakoota Sioux claims on behalf of all their members as well as all descendants of the original Medawakanton and Wahpakoota bands similarly situated. In like manner the individual petitioners are entitled to bring and maintain these suits on behalf of themselves and all other descendants of the original Medawakanton and Wahpakoota Sioux bands similarly situated.

There are two petitioning Indian Communities, to wit, the Sisseton and Wahpeton Tribe of Sioux Indians of the Sisseton Reservation in South Dakota, and the Sisseton and Wahpeton Tribe of Sioux Indians of the Fort Totten Reservation in North Dakota, whose membership comprises descendants of the original members of the Sisseton and Wahpeton bands of Mississippi Sioux as they existed during the times pertinent to the claims asserted in Docket 142. As such the two petitioning communities are entitled to bring and maintain the claims in Docket 142 under the provisions of the Indian Claims Commission Act, for and on behalf of its members and all other descendants of the original bands of Sisseton and Wahpeton Sioux similarly situated.

The petitioner, the Yankton Sioux Tribe, in Docket 332-A is authorized under the provisions of our Act to bring that suit on behalf of its members. We shall, however, at this time treat first with the Mississippi Sioux claims in Dockets 142, 359 through 363.

The traditional association of the Mississippi Sioux bands with the early development and growth of the Minnesota territory, and the adjacent northwest areas has been presented to the Commission with great emphasis in the abundance of historical documents now in the record. These Indians were no strangers to the white man. As early as 1670 the French had contacted the "Nadaiesioux" along with the other tribes that roamed the vast expanse that lay to the west and southwest of Green Bay and Lake Superior. Beginning with Finding 8, the Commission has evaluated the numerous reports of the French and English explorers and traders that spelled out continuous Sioux activity and occupancy of the Minnesota lands along the upper

Mississippi River and the neighboring rivers and lakes. It seems unnecessary to repeat again these historical facts as set down in our findings. At the time the United States established its jurisdiction over the Upper Mississippi region in 1803, the Sioux and the Chippewa to the north had pretty well divided up the Minnesota territory between them.

In 1805 Zebulon Pike reached the Upper Mississippi Valley where he had no difficulty finding Sioux villages along the west bank of the Mississippi River. Little Crow, the Medawakanton Chief, was encamped in the only village of any consequence situated on the east side of the Mississippi. Pike had been instructed among other things to look for suitable positions that would accommodate military outposts. He decided upon two small tracts, one situated at the mouth of the St. Croix River, the other at the falls of St. Anthony further up the Mississippi. The St. Croix River tract was nine miles square and contained 51,840 acres. The tract beginning at the confluence of the St. Peters and Mississippi River, and extending up the Mississippi to include the falls of St. Anthony, was 9 miles by 18 miles and contained 103,680 acres. Pike lost no time in concluding an agreement on September 23, 1805, for the conveyance of Sioux interest in the two tracts. He dealt exclusively with the Medawakantons whose chief, Little Crow, signed the agreement. On April 16, 1808, the United States Senate ratified "Pike's Purchase", while at the same time fixing the consideration to be paid to the Sioux at \$2,000 or its equivalent in goods and merchandise. The Commission finds precious little if any thing in the record that would contravene the facts pointing to Medawakanton aboriginal ownership of the two tracts conveyed to the United States under the 1805 agreement. The Commission therefore finds

and concludes that as of the effective date of the 1805 agreement the Medawakanton Sioux had Indian title to the two tracts involved in "Pike's Purchase" which are the subject of the claims asserted in Docket No. 361.

Following the 1805 purchase of the two small tracts along the Mississippi River, there were no further Sioux land cessions until the year 1830. However, in 1825 there was concluded at Prairie des Chien a most significant treaty between the United States and the tribes of the upper Mississippi regions.

It was in the 1820's that Congress began to focus serious attention upon increasing intertribal Indian disturbances in the northwest which constantly threatened to erupt into open warfare. Besides disrupting normal trading activity, it created havoc with the serious attempts to establish permanent white settlements in the area. It was the Mississippi Sioux who found themselves embroiled with their traditional enemies, the Chippewa, along their northern frontier, while to the south they were being challenged by the Sac and Fox and Iowa Indians for the choicer hunting areas.

At the urging of the United States, the interested tribes were assembled at Prairie des Chien for the purpose of entering into negotiations aimed at establishing permanent boundary lines and promoting peace.

Besides the four Mississippi Sioux bands, there was in attendance the chiefs and headmen of the Chippewa, Sac and Fox, Iowa, Winnebago, Menominee, as well as representatives of the United Chippewa, Ottawa, and Pottawatomie tribes of Indians. Although invited, the Yankton Sioux tribe did not attend.

After concluding the necessary preliminaries, each tribe through its

spokesmen outlined its territorial claims. Certain conflicts were compromised, while others were made the subject of future negotiations. No land cessions were made, nor were they contemplated. Finally, on August 19, 1825, the formal treaty was concluded with the aforementioned tribes subscribing their assent to the stipulations and conditions contained therein.

As stated in the preamble, the overall purpose of the treaty was,

" . . . 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. . ." (7 Stat. 272)

Under Article 2 of the treaty, the boundary line was fixed between the Mississippi Sioux and their southern neighbors, the Sac and Fox Nation. Informally, the line commences at the mouth of the Iowa River on the west bank of the Mississippi River, proceeds generally in a west southwest direction to the upper fork of the Desmoines River, thence in a straight line, west northwest to the lower fork of the Calumet or Big Sioux River, and down that river to its junction with the Missouri. This Commission has already determined in a separate proceeding that the lower fork of the Calumet River is the same as the "Rock River". (See Commission's Order of November 25, 1959) Provision was also made in Article 2 for obtaining the assent of the absent Yankton Sioux at a later date to that portion of the Article 2 line which commences at the forks of the Desmoines River and eventually terminates at the confluence of the Calumet or Big Sioux River and the Missouri River.

Pursuant to Article 5 of the treaty a boundary line was established between the Mississippi Sioux and the Chippewa Nation to the north. This

Article 5 line commences at a point described as,

". . . at the Chippewa River, half a day's march below the falls. . ."

This location is at the present site of Porter Mills, Wisconsin. From its starting point the Article 5 line courses approximately west northwest where it crosses the Mississippi River just above St. Cloud, Minnesota. From this point it moves in the same general direction to a point near the town of Garfield, Minnesota, in Douglas County. From that location it takes a more northerly course until reaching the confluence of Buffalo River and Red River; thence it descends the Red River to the "mouth of Outard or Goose Creek."

Article 5 of the 1825 Treaty also fixed the eastern boundary line of Sioux country. This line commences at the mouth of the Iowa River on the Mississippi, which site is also the starting point of the Article 2 line, or southern Sioux boundary line. It then follows northward along the Mississippi River until it reaches the mouth of Black River. From this point the treaty call moves the line,

". . . from Black river to half a day's march below the Falls of the Chippewa River."

Thus, the Sioux boundary line on the east terminates at the same point where the Article 5, Sioux-Chippewa or northern boundary line begins.

The treaty calls in Article 2 and 5 of the 1825 Prairie des Chien Treaty, circumscribed a vast area west of the Big Sioux River and Lake Traverse, which traditionally and historically has been associated with the Mississippi Sioux tribes. Within this defined area each of the four bands can be identified with a certain section. Starting from the Iowa

State line the Medawakanton territory and villages lay for the most part west of and along the Mississippi River extending to just north of the St. Peters River. Some of their land was east of the Mississippi River and west of Black River, and abutted the Chippewa lands to the north. The closely associated Wahpakoota band occupied the country below and west of the Medawakantons, south of the St. Peters River, and near the sources of the Cannon and Blue Earth Rivers. Together these two bands did range westward as far as the Big Sioux River, which river was the natural dividing line between them and the Yankton Sioux on the west. North and west of the Wahpakoota were the Wahpeton Band of Sioux, whose villages extended well up the St. Peters River near its sources. Further west and southwest, and as far as Jacques or James River in the Dakota territory, were the Sisseton Band of Sioux. For the most part the Sissetons and Wahpetons lived and hunted together.

Pursuant to Article 10 of the 1825 treaty, each of the participating parties acknowledged the supremacy of the United States, and the United States agreed to and recognized the boundaries as fixed.

This Commission has already interpreted the 1825 Prairie des Chien as conferring the benefits of recognized title to the lands belonging to the Iowa, Sac and Fox, and Winnebago tribes of Indians as described in the 1825 treaty and agreed upon by the other tribes. We find no compelling reason to deny that the Mississippi Sioux bands in like manner had a recognized title to the lands described as belonging to them under Articles 2 and 5 thereof. See The Sac and Fox Tribe of Indians, et al., v. United States, 5 Ind. Cl. Comm. 367; The Winnebago Tribe and Nation of Indians, et al., v. The United States, 8 Ind. Cl. Comm. 78.

We cannot equate our ruling in the recent case of Minnesota Chippewa Tribe, et al., v. United States, 8 Ind. Cl. Comm. 815, Docket 18-B, as defendant would have us do, with the situation in this case. In the Chippewa case, we held merely that the facts therein show that with respect to the Chippewa Indians, the Commission could find no congressional intent under the 1825 Prairie des Chien Treaty to confer upon these Indians a recognized title to a vast undefined and unlimited area north of the Article 5, Sioux-Chippewa line. Furthermore, we could find nothing in any of the subsequent dealings between the United States and the Chippewa Indians that would point to a later confirmation of Chippewa title to their claimed areas. Here in the instant case we are not confronted with the problem of an undefined and unlimited Mississippi Sioux area.

In finding government recognition of Mississippi Sioux title to the area bounded as described in Articles 2 and 5 of the 1825 Prairie des Chien Treaty, the need of proving aboriginal title has been eliminated with respect to the following areas which are the subject of claims asserted herein.

1. Royce Area 153. This tract was ceded under Article 3 of the Treaty of July 15, 1830, 7 Stat. 328, by the four bands of Mississippi Sioux, which area is situated in northern Iowa and comprises about two million acres. Royce Area 153 is the subject of claims asserted by the petitioners Medawakanton and Wahpakoota Sioux in Docket 359.

2. Royce Area 243. With the exception of that portion lying east of a line beginning at the mouth of the Black River and terminating at that point described in Article 5 of the 1825 Prairie des Chien Treaty as "half a

day's march below the Falls of the Chippewa River," this tract contains over 4 million acres in east central Minnesota and west central Wisconsin. Royce Area 243 was ceded by the Medawakanton Sioux under the Treaty of September 29, 1837, 7 Stat. 538, and is the subject of the claims asserted by the petitioners, Medawakanton and Wahpakoota Sioux in Docket 360.

3. Royce Area 289. This cession contains about 25 million acres in southern Minnesota, northern Iowa, and a small portion in eastern South Dakota. The area was ceded to the United States by the Sisseton and Wahpeton bands under the Treaty of Traverse des Sioux of July 23, 1851, 10 Stat. 949, and the Medawakanton and Wahpakoota bands under the Treaty of Mendota of August 5, 1851, 10 Stat. 954. Royce Area 289 is the subject of the principal claim asserted by the four bands of Mississippi Sioux in Dockets 142 and 362.

The petition in Docket 359 also included a claim by the Medawakanton and Wahpakoota bands of Mississippi Sioux to Royce Area 151. As set forth in Finding 31 herein, the Mississippi Sioux have disclaimed any further interest in Royce Area 151. We have found that the evidence in the record supports this action, and the Commission will therefore dismiss the petitioners' claim to Royce Area 151.

In connection with Royce Area 243, the Commission has taken issue with petitioners concerning the location of a part of the eastern boundary of the Sioux territory as fixed under Article 5 of the 1825 Treaty. In our considered judgment, Royce has inaccurately pictured that portion of the eastern boundary line of Area 243 described in Article 5 of the 1825 treaty which commences at the mouth of the Black River and terminates at a point

that is designated as "half a day's march below the Falls of the Chippewa River." As shown on the map, Wisconsin I, 18th Annual Report, Bureau of American Ethnology, 1896-97, Part 1, that segment of the line is depicted as proceeding up the Black River from its mouth to a point estimated to be just south of the source of the Clear Water or Eau Claire River. At this point the line leaves the Black River, and proceeds to the source of the Clear Water River, then follows the meanders of the Clear Water River to its confluence with the Chippewa River, thence down the Chippewa River to that point designated as a half a day's march below the Chippewa Falls. It is our view that, if correctly drawn in conformity with the unambiguous language in Article 5 of the 1825 treaty, that segment of the eastern Sioux boundary of Royce Area 243 would follow a straight line from the mouth of the Black River to half a day's march below the Falls of the Chippewa River.

In so doing, we are of course well aware of the Commission's recent and somewhat contradictory statements in the case of the Winnebago Tribe and Nation of Indians, et al., v. United States, 8 Ind. Cl. Comm. 78, Dockets 243, 244, and 245. In Finding 13 of the Winnebago case the Commission concluded that under Article 5 of the 1825 Prairie des Chien Treaty, the eastern boundary of Royce Area 243 followed the Black River and reached the Chippewa Falls as depicted by Royce on map, Wisconsin I. We therefore found this segment of the eastern boundary of Royce Area 243 to be coextensive with the northwest boundary line of Royce Area 245 which is Winnebago country as described in Article 6 of the 1825 Prairie des Chien Treaty. Finding 13 in that case is superfluous to a proper delineation of the western limits of the Winnebago territory (Royce Area 245), and our apparent reliance on

Royce in that regard was indeed unfortunate. The Commission therefore repudiates Finding 13 in the Winnebago case, as well as certain statements in the opinion of like import. Our action this date does not change or affect the Commission's determination of the Winnebago title to lands claimed by them in that case.

The Commission also concludes that the evidence in the record does not support Sioux aboriginal claims west of that line drawn from the mouth of Black River to Chippewa Falls. By 1832, the Winnebago were freely hunting the Black River area. They had established a village on the south side of Black River near La Crosse, Wisconsin. There were no Sioux villages in this particular area at any time. The Menominee Indians were another group who had easy access to the Black River and made use of it. By the 1837 Treaty, the Sioux were interested only in the lumbering operations conducted on the Menominee River which is a branch of the Chippewa River. This river lies a considerable distance west of the Black River-Chippewa Falls line, and within the area recognized under the 1825 Prairie des Chien Treaty as Sioux country. Furthermore, as we noted in our findings, the testimony of petitioners' expert, Dr. Wallace, lends little if any support to exclusive Sioux use and occupancy of any area west of the Chippewa River by 1837.

The final Mississippi Sioux claim, which is asserted by the petitioners, Medawakanton, and Wahpakoota bands, involves Royce Area 413.

Royce Area 413, is a tract of land containing about 320,000 acres that is located on the north side of the Minnesota River in southwestern Minnesota. It was ceded to the United States by the Medawakantons and Wahpakootas under the Treaty of June 19, 1858, 12 Stat. 1031.

The Commission has found that as of the effective date of the 1858 Treaty of Cession, the Medawakanton and Wahpakoota bands had good title to Royce Area 413, which title was confirmed unto these Indians by statute in 1860, and under the following circumstances:

As originally drafted, the two 1851 Mississippi Sioux treaties of cession, the Mendota and Traverse des Sioux treaties, provided for two reservations on the Minnesota River, one for the "Upper Sioux", meaning the Sisseton and Wahpeton bands, and the other for the "Lower Sioux", the Medawakantons and Wahpakootas. However, the Senate struck those provisions at the time of ratification of the two treaties, and it was thereafter contemplated that the four bands would eventually be relocated on reservations outside the ceded area. In the interim these Indians were to be permitted to remain at their present homesites until the President selected new reservations. However, the President did not set aside any land without the ceded area, but instead authorized these Indians to occupy the reservation originally designated in 1851 treaties as their permanent home. Because of the doubtful validity of the Indian title to these tracts, Congress, by the Act of July 31, 1854, 10 Stat. 315, authorized the President "to confirm to the Sioux of Minnesota forever, the reserve on the Minnesota River now occupied by them . . ." Apparently, the President never acted under this specific authority.

The increasing demands of the white settlers for more lands initiated treaty negotiations with the Mississippi Sioux for the cession of that part of their reservation on the north side of the Minnesota River. On June 19, 1858, the Medawakantons and Wahpakoota bands, by treaty, ceded

their part of the reservation on the north side of the Minnesota River (12 Stat. 1031). This is Royce Area 413. Under this treaty, the lands on the south side were confirmed unto the Medawakanton and Wahpakoota bands. (The Sisseton and Wahpeton bands executed a similar treaty of cession on June 19, 1858, 12 Stat. 1037, and were also confirmed an interest in the reservation lands on the south side of the Minnesota River). The reservation on the south side of the Minnesota River is known as Royce Area 440. (Minnesota 1, 18th Annual Report, Bureau of American Ethnology, 1896-'97, Part II.)

Although the 1858 treaty provided for the disposition of the lands on the north side of the Minnesota River, it noted the failure of the President to confirm title to the Indians under the 1854 Act. Therefore a special provision was made for submitting to the Senate for determination the question of the validity of Indian title to the ceded lands. On June 27, 1860, the Senate resolved this question as follows:

". . . that said Indians possessed a just and valid right and title to said reservations . . . which by the treaties of June, 1858, they have relinquished and given up to the United States." (12 Stat. 1042)

Throughout this case, the defendant has sought to interpose as a jurisdictional defense to the Mississippi Sioux claims the Act of February 16, 1863, 12 Stat. 1863. Any attack on the Commission's jurisdiction is certainly of singular importance and needs to be answered.

The 1863 Act referred to above is more commonly alluded to as the "Forfeiture Act." Its passage was the result of Congressional retribution stemming from the outbreak of the notorious Sioux uprising in Minnesota in 1862. In August of that year, a rebellious band of "Lower Sioux" left

their reservation on the Minnesota and embarked on a murderous rampage across the neighboring countryside, killing and wounding numerous settlers and destroying a great deal of property.

In the spring of 1863 the military finally suppressed the uprising. Many of the Sioux were captured and confined, while others, principally the upper Sioux bands, fled to the northwest and into Canada.

As a punitive measure, and in order to provide compensation to those settlers who suffered injury and depredation, Congress passed the Act of February 16, 1863, 12 Stat. 652, which act, besides calling for payment of damages sustained by the settlers, sought to annul and abrogate all treaties heretofore made and entered into by the four bands of Mississippi Sioux, but only in . . . "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 of any of them to be forfeited to the United States." (Underscoring supplied)

The immediate effect was to cut off the annuity payments then due under the prior treaties, and to forfeit the existing reservation in the State of Minnesota. But one might ask what about those acts and transactions completed under treaties which do not impose a future obligation upon the United States? Were past treaties of cession to be annulled in toto and the land returned to the Indians? It is upon these treaties of cession anti-dating the 1863 Act that the petitioners, the Mississippi Sioux, have based their present claims.

The possible retroactive effect of the 1863 Act upon prior treaties



















































