BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS, ET AL, Docket No. 74
THREE AFFILIATED TRIBES OF THE Docket Nos. 350-B and
FORT BERTHOLD RESERVATION, 350-C
THE YANKTON SIOUX TRIBE OF INDIANS, Docket No. 332-A
THE CHIPPEWA CREE TRIBE OF INDIANS, Docket No. 221-A
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Decided: August 27, 1965

FINDINGS OF FACT

Preliminary Statement

Petitioners in Docket No. 74, Sioux Tribe, et al, filed a motion before this Commission on March 23, 1965, requesting that certain preliminary questions concerning that docket be determined. Upon response by the interested parties the matter was argued before the Commission on April 29, 1965.

In pursuance of the motion and upon oral agreement made by the parties in open hearing the Commission will make a preliminary determination of the location of the western boundary of the "Territory of the Sioux or Dahcotah Nation" as defined in the Treaty of Fort Laramie of September 17, 1851 (11 Stat. 749). For the reasons set
forth hereinafter the Commission is of the opinion that the Treaty of Fort Laramie (11 Stat. 749) recognized the title of the "Sioux or Dahcotah Nation" and that prior litigation has made findings of fact on the subject unnecessary.

For the purpose of the factual determination with regard to the location of the western boundary of the area described in the treaty as that of the "Sioux or Dahcotah Nation", the following findings of fact are made:

1. Prior to and during the negotiations leading to the Treaty of Fort Laramie the following instructions were issued and statements made concerning the desirability and purpose of establishing boundaries for the various tribes in the area concerned in the treaty:

   * * *

   On August 16, 1849, Mr. Orlando Brown, the new Commissioner of Indian Affairs, wrote to Thomas Fitzpatrick, a Superintendent of Indian Affairs, informing him that the recommendations made in the June 15 letter had been approved by the Secretary of the Interior, who directed that they be carried into effect. Commissioner Brown instructed that

   * * * The arrangements desired can best be effected by a treaty, to which all the Indians, or the larger and more important tribes of your agency, shall be parties; and which shall bind them to abstain from hostilities against each other, and not only from molesting in any way our military expeditions or emigrants, but to afford them any kindness or facilities in their power, when needed. There should also be a clear and definite understanding as to the general boundaries of the sections of country respectively claimed by them, as their residence and hunting grounds; and they should be required not to trespass upon those of each other without permission from the occupant tribes, or from the proper agent or agents of the government. * * *
In his annual report to the Commissioner of Indian Affairs written from St. Louis on October 13, 1849, Superintendent of Indian Affairs, D. D. Mitchell stated:

** * ** Again, the boundaries dividing the different tribes have never been settled or defined; that is the fruitful source of many of their bloody strifes, and can only be removed by mutual concessions, sanctioned by the government of the United States. The boundaries being once established and clearly understood, each tribe could be held responsible for any depredations that might be committed within their respective territories. ** * **

The Commissioner, in turn, in his annual report to the Secretary of the Interior, dated November 30, 1849, stated:

** * ** Under these circumstances, it has been deemed expedient and advisable to take measures to bring about a proper understanding with the Indians, which will secure their good will, and prevent collisions and strife among them, by obligating each tribe to remain as much as possible within their respective districts of country, and providing that, where disputes or difficulties occur, they shall be submitted to the government, and the Indians abide by its decision. ** * **

Congress by the Act of February 27, 1851, 9 Stat. 570, 572, appropriated $100,000 for the expenses of making treaties with the Indian tribes of the prairies. The President designated D. D. Mitchell and Thomas Fitzpatrick to act as treaty commissioners. In his letter to Mitchell, under date of May 26, 1851, informing him of his selection as a treaty commissioner, the Commissioner of Indian Affairs re-emphasized the need to provide compensation to the Indians for the use of the right of way across their lands, and stated:

It is important, if practicable, to establish for each tribe some fixed boundaries, within which they should stipulate generally to reside, and each should agree not to intrude within the limits assigned to another tribe without its consent. If in arranging such boundaries there should be a portion of country not included where it has been their habit to go periodically in pursuit of game, it should be recognized as a neutral ground where all will enjoy equal privileges and have no right to molest or interfere with one another. IV Kappler, Indian Affairs, Laws and Treaties, Senate Document 53, 70th Cong., 1st Sess., p. 1074-1075.
Negotiations between the treaty commissioners of the United States and representatives of the various Indian tribes began on the Treaty Ground near Fort Laramie in the Indian Territory on September 8, 1851. According to an account of the proceedings which was published in a St. Louis newspaper, The Republican, during his address to the Indians on the first day of negotiations Mitchell said, in substance, the following:

** **

In order that justice may be done each nation, it is proposed that your country be divided into geographical districts -- that the country and its boundaries shall be designated by such rivers, mountains and lines, as will show what country each nation claims and where they are located. In doing this it is not intended to take any of your lands away from you, or to destroy your rights to hunt, or fish, or pass over the country, as heretofore. But it will be expected that each nation will be held responsible for depredations committed within its territory, unless it can be clearly shown that the people of some other nation committed them, and then that nation will be held responsible. ** **

** **

When you have made peace between all your nations here assembled, there will be no occasion for war parties going into the country of another nation. St. Louis Republican, October 26, 1851.

The November 9, 1851, edition of the Republican reports that the entire day of September 12 was given up to an attempt to designate on the map the territory of each of the nations, and to mark it by metes and bounds. ** **

** **

** **After much consultation, particularly of the Indians among themselves, the metes and bounds of the several nations were agreed upon.

The import of these numerous statements by United States Government officials is too clear to be mistaken. The purpose of the Treaty of Fort Laramie was to establish, as between the United States and the various signatory tribes, the boundaries
of the lands of the tribes. These boundaries were recognized as much by the United States, for purposes of determining the Indians' rights thereto, as they were by the Indians, for purposes of accepting responsibilities therefor.

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(See Crow Tribe of Indians v. The United States, 151 C. Cls. 281, 288, et seq.)

2. There appears to be no journal of the Fort Laramie Treaty Council. However, a man by the name of A. B. Chambers, who was editor of the Missouri Republican, a St. Louis newspaper, was present and acted as Secretary to the Treaty Commission. The only available record of the proceedings consists of his accounts which were published in the Missouri Republican.

The following are excerpts from those articles written by Mr. Chambers for his readers:

September 12, 1851.

This entire day was given up to an attempt to designate on the map the territory of each of the nations, and to mark it by metes and bounds. In this effort, the Commissioners had the assistance of the Rev. Father De Smidt, who has probably a more perfect knowledge of the topography of the country, than any one now living. To an enlarged and comprehensive, as well as learned mind, he combines great aptitude and facility of knowing and understanding a country. He has travelled in nearly every direction from the Western boundary of Missouri to the Pacific. All that he has seen, and everything that he has been able to gather, either from the Indians, traders or trappers, as to the course or character of rivers, ranges of mountains, and extent of plains, their peculiar formation—in a word, everything pertaining to the topography of the country—he has carefully collected and embodied in a great number of small maps, which, combined, contain a greater amount of correct information than can be found anywhere else. He has very thoroughly explored the Eastern and Western slopes of the Rocky Mountains, as far South as the line of Oregon; and, we hazard nothing
in saying, that there is no man living so extensively and correctly informed as to the geography of the headwaters of the Mississippi, the Yellow Stone, and the Columbia Rivers, and their tributaries and lakes, and the mountains from whence they rise, or through which they pass, and how they interlock and pass each other. He has accumulated this mass of information, in part, from his own observations. He has spent many years amongst the roving Indian tribes, traversing their country many hundreds of miles, even far beyond the Northern boundary of the United States. He has gathered from those whom he has met and conversed with, and he is enabled now to correct many of the gross errors which are to be found on all the maps now published.

In addition, the Commissioners had the assistance of Mr. James Bridger, the owner and founder of Bridger's Fort, in the mountains. This man is a perfect original. He is a Kentuckian by birth, but has been in the Indian country since he was sixteen years of age. He was with Gen. Ashley in his early trapping expeditions, and afterwards with various companies, and finally, roamed over the country on his own hook, in the capacity of trapper, hunter, trader, or Indian fighter, as the emergency demanded. He has traversed the mountains East and West, and from the Northern boundary of the United States to the Gila river. He is not an educated man, but seems to have an intuitive knowledge of the topography of the country, the courses of streams, the direction of mountains, and is never lost, wherever he may be. It is stated by those who have had him in their employ, that in the midst of the mountains, when the party of trappers wished to move from one stream to another, or cross a mountain to any stream or place, or when lost or uncertain of the proper direction, they would always appeal to Bridger. He would throw his gun carelessly over his shoulder, survey the country awhile with his eye, and then strike out on a course, and never fail to reach the place, although he had several hundred miles to traverse over a country which he never traveled, and to places he had never seen. To this seemingly intuitive knowledge of country, he adds the singularly retentive memory of peculiarities and of every incident in his own history or that of his companions. In his own rude way, he can lay down nearly every stream that empties into the Missouri or Yellow Stone, that flows down the western slope of the Rocky Mountains, and describe how these streams interlock with each other. He showed us, and his information in this respect was confirmed by others, how it was practicable to go by water from the
Missouri river into the Columbia river, or from the Atlantic to the Pacific Ocean, without portage at any place except where the rivers are impassable because of rapids. There is a lake in the Rocky Mountains from which the waters flow on the one side into the Missouri, and on the other into the Columbia river. Every thing Bridger has seen, he recollects with entire precision, and in his wild life (he is now advanced in years) he has traversed the whole country in many directions.

Beside the assistance of these men, there was the aid of the Interpreters, and a number of traders and trappers, some of whom have been thirty years in the country. Each nation had a number of their most intelligent men, and they all seemed to fully understand the object of the map, as also the geography of the country. After much consultation, particularly of the Indians among themselves, the metes and bounds of the several nations were agreed upon. The limits fixed will be given when we state the provisions of the treaty.

September 13, 1851

This morning, when the Council met, much difficulty was experienced in explaining to the Sioux the extent and effect of the boundary designated between them and the Cheyennes and Arrapahoes. The Platte was fixed as the boundary, but the Sioux asserted their claim to both sides of the river. They did not contend that the south side of the Platte belonged to them, but as they had always hunted on the south side, as far as the Republican Fork of the Kansas and the waters of the Arkansas, they claimed the same right now, and therefore objected to the line. Speeches were made by Snake, and The Brave Bear, and others, only one of which is worth reporting.

Black Hawk, (an Ogallalah) said: Father, if there is anything I do know, it is this country, for I was raised in it, with the interpreters and traders. You have split the country, and I don't like it. What we live upon, we hunt for, and we hunt from the Platte to the Arkansas, and from here up to the Red Bute and the Sweet Water. The Cheyennes and Arrapahoes agree to live together and be one people; that is very well, but they want to hunt on this side of the river. These lands once belonged to the Kiowas and the Crows, but we whipped
these nations out of them, and in this we did what the white men do when they want the lands of the Indians. We met the Kiowas and the Crows and whipped them, at the Kiowa Creek, just below where we now are. We met them and whipped them again, and the last time at Crow Creek. This last battle was fought by the Cheyennes, Arrapahoes and Ogallahlahs combined, and the Ogallahlahs claim their share of the country.

Col. Mitchell finally succeeded in getting them to understand that, in fixing a boundary to their country, he had no purpose of limiting them to that boundary in hunting, or to prohibit them from going into the territory of any other Nation, so long as they remained at peace.

3. The Treaty of Fort Laramie was entered into by defendant and several tribes of Indians on September 17, 1851. Among these tribes was the Sioux or Dacotah Nation. The language of that treaty, insofar as pertinent to the question herein, is as follows:

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Article 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories, viz:

The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Bute, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

The territory of the Gros Ventre, Mandans, and Arrickaras Nations, commencing at the mouth of Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to
the mouth of Powder River in a southeasterly direction, to the head-waters of the Little Missouri River; thence along the Black Hills to the head of Heart River, and thence down Heart River to the place of beginning.

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The territory of the Crow Nation, commencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountain to the head-waters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the head waters of the Muscle-shell River; thence down the Muscle-shell River to its mouth; thence to the head-waters of Big Dry Creek, and thence to its mouth.

The territory of the Cheyennes and Arrapahoes, commencing at the Red Bute, or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the headwaters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fe road; thence in a northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning.

It is, however, understood that, in making this recognition and acknowledgment, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing or passing over any of the tracts of country heretofore described.

4. There is agreement between petitioners and defendant with regard to the north, east, and south boundaries of Sioux territory as called for by the description in the treaty. They also agree as to the location of the "Red Butes" and the "head-waters of Heart River". The disagreement concerns the location of the western line between these two terminal points. The particular question in
dispute concerns the proper location of the range of mountains referred to as the "Black Hills" in the treaty description of Sioux territory.

The area in question had been explored a few years prior to the treaty date of 1851. Captain J. C. Fremont and Rufus B. Sage had both been through the country and had mapped the area. Another person who had considerable knowledge of the general area was Father Pierre-Jean De Smet, S. J., who was requested by Treaty Commissioner Mitchell to participate in the Fort Laramie Treaty Council.

Father De Smet kept a journal of his travels and in it is set forth the journey to the Fort Laramie Treaty grounds some 37 miles below Fort Laramie at Horse Creek. These journals were edited and a brief resume of the route set forth as follows:

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--- The boat stopped on its way among the several tribes to give Father De Smet an opportunity of consulting with them, and he made numerous horseback trips to their various camps -- Arrived at Fort Union July 14th.

July 31st Father De Smet, accompanied by Major Culbertson and thirty-two Indian chiefs of the Assiniboin, Crow, Minnetaree and Aricara tribes, set out for the council ground on the Platte river near Fort Laramie -- Crossed the high country west of the Yellowstone river to Fort Alexander on the left bank of this stream opposite the mouth of the Rosebud, where they arrived August 11th -- Resumed their journey August 17th, crossed the Yellowstone and ascended the Rosebud to its source -- left the valley of the Rosebud August 22d and crossed over to the valley of the Tongue river -- Left Tongue river next day and entered the watershed of Powder river in the valley of Piney Fork -- Passed Lake De Smet (named on this occasion) on the 24th. -- Reached Powder river August 27th -- Crossed the divide between the Powder and Platte rivers September 1st, and next day reached the Oregon and California road on the north bank of the Platte at the Red Buttes -- Arrived at Fort Laramie on September 10th,
and at the council ground, "thirty-seven miles below Fort Laramie," at the mouth of Horse creek, on the 11th.

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In the journal itself Father De Smet makes the following statement:

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On the 1st of September, having traversed three chains of hills, we gradually attained the summit of the Black Hills. We had one cart less, and one heavy wagon so broken that it had to be tied together with strips of raw buffalo-hide. From the summit we were so happy as to perceive a distant lake. We eagerly hastened in that direction, for we were consumed with thirst, and had serious fears for our beasts of burden, which were slackening their weary pace. To our astonishment, we directly perceived that we were still at a great distance from Fort Laramie. Instead of being near that fort, in accordance with the assurance of the three Crows, we discovered ourselves in sight of the Red Buttes, (near Casper, Wyoming) twenty-five miles off. This is a well-known spot on the Great Oregon Route, and is 160 miles from Fort Laramie. On the top of the Black Hills I left a little souvenir of my passage, -- on a very high rock of the form of a pulpit, I carved a large and handsome cross.

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In the neighborhood and along the base of the Black Hills there lies a very extensive tract of fertile and tillable land. The verdure is rich and abounds in all the valleys, and these valleys penetrate the mountains like so many veins, where millions of domestic animals might be raised; for the springs and rivulets, so seldom occurring in the central section between the Yellowstone and the Black Hills, are very numerous in the interior and at the base of these mountains.

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We followed the great road south of the Platte to the foot of the Black Hills. On this road we found ourselves relieved from these obstacles which had so often endangered our vehicles and our animals. After eight days' journey along the Platte, we arrived at Fort Laramie without the least trouble or accident.

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Father De Smet drew a map of the respective territories of the various tribes and presented it to Col. Mitchell. This map, which is petitioners' exhibit 514, shows a complete boundary around the several areas of the respective tribes as well as the division lines between those tribes. These division lines are contiguous and the respective tribal areas completely fill the outside perimeter.

This map shows the Sioux western line following the "Black Hills" eastward and northward from its terminus at the "Red Bute" to the headwaters of the Heart River and thence to the Missouri River and down that river to the beginning.

It will be noted that this map does not appear to follow the boundary description as agreed upon in council by the Mandan, Gros Ventre, and Arikara. This boundary as agreed upon in council forms a common line with the Sioux western boundary along the greater part of its length and while Father De Smet shows this contiguous line on his map it is much shorter than it should be because he apparently does not follow the Little Powder River to its headwaters as called for in the Mandan, etc. description.

The same situation is true with regard to the description of the Crow territory. Insofar as can be determined from his map,
Father De Smet ignored that part of the Crow boundary which called for a line running up the Powder River to its source; thence along the main range of the "Black Hills" and Wind River Mountains, etc. The line as drawn by Father De Smet is a considerable distance east of what appears to be Powder River on his map and, so far as can be told from the map, appears to follow the drainage divide between the streams flowing east into the Missouri and those flowing north into the Missouri.

5. Captain Fremont's journal tells of his trip from Colorado to Fort Laramie, Wyoming, in 1842:

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(July 12, 1842) For a short distance, our road lay down the valley of the Platte, which resembled a garden in the splendor of fields of varied flowers which filled the air with fragrance. The only timber I noticed consisted of poplar, birch, cottonwood, and willow. In something less than three miles, we crossed Thompson's Creek, one of the affluents to the left bank of the South Fork -- a fine stream, about sixty-five feet wide, and three feet deep. Journeying on, the low dark line of the Black Hills lying between us and the mountains to the left, in about ten miles from the fort we reached Cache a la Poudre, where we halted to noon. This is a very beautiful mountain stream, about one hundred feet wide, flowing with a full swift current over a rocky bed. We halted under the shade of some cottonwoods, with which the stream is wooded scatteringly. In the upper part of its course, it runs amid the wildest mountain scenery, and, breaking through the Black Hills, falls into the Platte, about ten miles below this place.

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15. These were the Laramie Mountains, and are not to be confused with the Black Hills of Dakota. Fremont was in southeastern Wyoming.
(July 15th, 1842) After having allowed our animals two hours for food and repose, we resumed our journey, and toward the close of the day came in sight of Laramie's Fork. Issuing from the river hills, we came first in view of Fort Platte, a post belonging to Messrs. Sybille, Adams & Co., situated immediately in the point of land at the junction of Laramie with the Platte. Like the post we had visited on the South Fork, it was built of earth, and still unfinished, being enclosed with walls (or rather houses) on three of the sides, and open on the fourth to the river. A few hundred yards brought us in view of the post of the American Fur Company, called Fort John, or Laramie. This was a large post, having more the air of military construction than the fort at the mouth of the river. It is on the left bank, on a rising ground some twenty-five feet above the water; and its lofty walls, white-washed and picketed, with the large bastions at the angles, gave it quite an imposing appearance in the uncertain light of evening. A cluster of lodges, which the language told us belonged to Sioux Indians, was pitched under the walls, and, with the fine background of the Black Hills and the prominent peak of Laramie Mountain, strongly drawn in the clear light of the western sky where the sun had already set, the whole formed at the moment a strikingly beautiful picture.

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The road led over an interesting plateau between the North Fork of the Platte on the right, and Laramie River on the left.

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I was desirous to visit the Platte near the point where it leaves the Black Hills, and therefore followed this stream, for two or three miles, to the mouth; where I encamped on a spot which afforded good grass and prele (equisetum) for our animals.

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16. Fort Platte, here mentioned, was a rough unfinished adobe post belonging to a fur-trading company; Fort Laramie, near at hand, belonged to the American Fur Trading Company. First built in 1834 as Fort William, by William Sublette and Robert Campbell, it had been taken over by the powerful corporation in 1836. Its log stockade had been replaced by adobe walls. The fort was a trading center for a wide mountain area, and was famous among both Indians and whites. (These are footnotes of the editor of the Journal)
To the south, along our line of march today, the main chain of the Black or Laramie Hills rises precipitously.

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The main chain of the Black Hills was here only about seven miles to the south, on the right bank of the river, rising abruptly to the height of eight and twelve hundred feet.

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On the maps of the Fremont journey there is shown from longitude 105° to slightly beyond longitude 107° and between latitude 42° and 43° two separate ranges of mountains labeled "Black Hills". They obviously were not the "Black Hills" of South Dakota which are located approximately between longitudes 103° and 104° and latitude 43° and 45°.

6. Another explorer who went through the area prior to the treaty council was Rufus B. Sage. Sage's map apparently borrowed from the Fremont map according to the editors who compiled the Sage material.

Sage's map shows the "Black Hills" with the word "Titonwaw" inscribed on the area to the east and between the "Black Hills" and the Missouri River. The depiction of the "Black Hills" on this map shows them running easterly almost parallel with the North Fork of the Platte River for a distance and then turning northeasterly passing to the east of the headwaters of the Little Missouri River and extending about half the distance along that river to where it empties into the Missouri River. It appears that the map shows the Cheyenne River to the east of the mountain range labeled "Black Hills" and does not show the present-day Black Hills of South Dakota which lie between the present-day Belle Fourche River and the south fork of the Cheyenne River.
Just to the west of the range of mountains labeled "Black Hills" by Sage is shown another range which is unnamed. This range runs in an east-west direction and lies just north of the Sweetwater River. Their western end lies part south of what Sage labels "Rocky Mountains" and at their southern edge is "South Pass". This range is probably what is known today as the Rattlesnake Range.

7. Hiram Martin Chittenden in Vol. II of The American Fur Trade of the Far West beginning on page 734 makes the following statements:

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Far to the eastward of the Bighorn mountains, across a dreary waste of reddish hills and broken, uninviting country, the observer may descry the dark and shaggy eminences of the Black Hills, the extreme eastern outlier of the Rocky mountains. The dense forests of pine and stunted, windtorn cedars gave to these hills, when seen from a distance, the dark appearance from which is derived their name. Like most of the other early names of the Northwest, this one was first used by the French. Long before any American had visited these parts, Les Cotes Noires were well known to the Creole trader and voyageur. The name is now restricted to the mass of mountains enclosed by the two forks of the Cheyenne river, in the modern states of Wyoming and South Dakota, but it had a far broader application in the early times.

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Extending southwesterly from the Black Hills of Dakota, southerly from the Bighorn range, and southeasterly from the Wind River mountains, are many detached spurs and isolated peaks which merge together in the region along the upper North Platte and the Laramie rivers, and extend thence southerly to the high mountains of Colorado. These ranges are now known under a variety of local names, but in the fur trade period they were collectively a part of the Black Hills. Probably the most noted summit in those scattered groups is Laramie Peak, nearly fifty miles west of old Fort Laramie, and one of the best known landmarks of this region.

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8. In addition to the 1851 Treaty of Fort Laramie the Sioux Nation entered into a treaty with defendant on April 29, 1868, which
contained, among other things, the following two articles:

* * *

Article 2. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

* * *

Article 16. The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux Nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in the Territory of Montana shall be closed.

* * *
9. There were subsequent dealings between the Sioux Nation and defendant on June 23, 1875, whereby the Sioux ceded certain lands in Nebraska. Thereafter, on September 26, 1876, another agreement was entered into between the Sioux and defendant, and on February 28, 1877, Congress passed an Act (19 Stat. 254) which affirmed the 1876 Agreement with certain changes which were later agreed to by the Sioux.

Article 1 of that Act provided as follows:

* * *

Article 1. The said parties hereby agree that the northern and western boundaries of the reservation defined by article 2 of the treaty between the United States and different tribes of Sioux Indians, concluded April 29, 1868, and proclaimed February 24, 1869, shall be as follows: The western boundaries shall commence at the intersection of the one hundred and third meridian of longitude with the northern boundary of the State of Nebraska; thence north along said meridian to its intersection with the South Fork of the Cheyenne River; thence down said stream to its junction with the North Fork; thence up the North Fork of said Cheyenne River to the said one hundred and third meridian; thence north along said meridian to the South Branch of Cannon Ball River or Cedar Creek; and the northern boundary of their said reservation shall follow the said South Branch to its intersection with the main Cannon Ball River, and thence down the said main Cannon Ball River to the Missouri River; and the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated.

* * *

10. Petitioners relied upon documentary evidence to establish the disputed segment of the western line for which they contend. Based upon their interpretation of this evidence they have set forth upon their exhibit No. 8, along with the other boundaries, what they consider to be the proper location of the western line from the "Red Butte" to the "headwaters of the Heart River"
This line continues from the "Red Bute" in a southwest-west-northwest direction to include the present-day Rattlesnake Mountain Range, the plain south of that range and the Sweetwater River. It continues in a north-easterly direction including the eastern flanks or spurs of the Big Horn Mountains in Wyoming, following the Powder River valley to where the Powder River and Little Powder River join, at which point petitioners' line turns abruptly south, following the Little Powder River to its headwaters, and then turns abruptly in a northeasterly direction along the Black Hills to the head of Heart River, etc.

These boundaries as set forth by petitioners on their exhibit 522, which is a composite map of land cessions taken from Royce's compilation in the Eighteenth Annual Report of the Bureau of American Ethnology, follow the lines of later treaty cessions by the Sioux, Crow, Fort Berthold, Eastern Shoshone, and Cheyenne-Arapahoe Tribes. Royce mapped only land cessions and since the Fort Laramie Treaty was not a cession treaty he did not include the lands involved in that treaty in his compilation as having been ceded thereunder.

The Fort Laramie Treaty is listed on page 786 of Volume II of the Report of the Bureau of American Ethnology, but the cession numbers listed therewith are those of the later treaties which made the actual cession.

Royce states on page 787 of the Report that "The tract herein described (referring to the Fort Laramie Treaty description) included only a portion of what was subsequently recognized as Sioux Territory".

Royce does not list a cession number or numbers for the area described as Sioux Territory under the Fort Laramie Treaty.

11. Defendant's expert witness, Mr. William H. Richards, a
cadastral engineer, presented a report and testified concerning the proper location of the Sioux western line as defined in the Fort Laramie Treaty. This report, defendant's exhibit 250, consisted of various maps upon which Mr. Richards had located the terminal points of the disputed segment of the western line and upon which he had placed three alternative lines. One of these lines consisted of a straight yellow line between these two terminal points for the purpose of illustration and comparison.

A second, or red, line was drawn from the southern terminal or "Red Bute" in a northeasterly direction straight to the approximate southern extremity of the present-day Black Hills of South Dakota; thence along the crest of that range to its northern end; thence to the "headwaters of Heart River", the northern terminal of the disputed segment of the western line.

A third, or blue, line was drawn from "Red Bute" in a generally northeasterly direction along the drainage divide which separates the headwaters of the south fork of the Cheyenne, Belle Fourche, Grand and Cannonball Rivers on the east from the headwaters of the Powder, Little Powder and Little Missouri Rivers on the west.

Neither the red nor blue line agrees with that of the petitioners as set forth on their exhibit 8.

Defendant also has in evidence as its exhibit 36 a map which appears to have been a part of the evidence before this Commission in the original suit. This map is labeled "Boundaries Defined By Fort Laramie Treaty" and shows those boundaries for which defendant contended at that time. While it is somewhat difficult to determine
in detail, this map appears to place the presently disputed segment of
the western boundary of the Sioux along the same drainage divide for
which defendant now contends.

12. Based upon the findings of fact heretofore made and upon the
record as a whole, it is the conclusion of the Commission that the proper
location of the Sioux western boundary between the "Red Bute" on the south
and the headwaters of Heart River on the north follows the drainage divide
between the rivers flowing east into the Missouri and those flowing north
into the Missouri. At the point where such line joins the line of the
Gros Ventre, Mandan, and Arricara Indians along the "range of mountains
known as the Black Hills" it continues to follow said line to the head-
waters of the Heart River forming a contiguous boundary with said Gros
Ventre, Mandan and Arricara line to that point and from there continues
as a contiguous boundary with said Gros Ventre, Mandan, and Arricara
line to the mouth of the Heart River.

In the light of this finding as to the proper location of the
disputed portion of the Sioux western boundary, it is the conclusion
of this Commission that the proper description of the area which was
recognized as Sioux Territory under the Fort Laramie Treaty (11 Stat.
749) should read as follows:

The territory of the Sioux or Dahcotah Nation,
commencing the mouth of the White Earth River, on the
Missouri River; thence in a southwesterly direction
to the forks of the Platte River; thence up the north
fork of the Platte River to a point known as the Red
Bute, or where the road leaves the river; thence along
the range of mountains known as the Black Hills, (i.e.,
along the drainage divide between the streams flowing
north into the Missouri River and those flowing east into the Missouri River) to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner