

BEFORE THE INDIAN CLAIMS COMMISSION

SIOUX TRIBE OF INDIANS, et al.,)	Docket No. 74
)	
TURTLE MOUNTAIN BAND OF CHIPPEWA)	
INDIANS, et al.,)	Docket No. 113
)	
THE LITTLE SHELL BAND OF CHIPPEWA)	
INDIANS, et al.,)	Docket No. 191
)	
CHIPPEWA CREE TRIBE OF ROCKY BOY)	
RESERVATION, et al.,)	Docket No. 221
)	
RED LAKE AND PEMBINA BAND, et al.,)	Docket No. 246
)	
THE THREE AFFILIATED TRIBES OF THE)	Docket Nos. 350-B
FORT BERTHOLD RESERVATION,)	and 350-C
)	
Petitioners,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 3, 1968

Appearances:

Marvin J. Sonosky, Arthur Lazarus, Jr.
and William Howard Payne, Attorneys
for Petitioners in Docket No. 74

Glen A. Wilkinson, Attorney for Petitioners
in Docket No. 113

Lawrence C. Mills, Attorney for Petitioners
in Docket Nos. 191 and 221

Jay H. Hoag, Attorney for Petitioners
in Docket No. 246

Jonathan C. Eaton, Jr., Attorney for
Petitioners in Docket Nos. 350-B and
350-C

Appearances: (cont'd)

Walter A. Rochow, with whom was
Mr. Assistant Attorney General,
Clyde O. Martz, Attorneys for
defendant

O P I N I O N

This matter is now before the Commission on a motion filed on May 1, 1968, by the petitioning Three Affiliated Tribes of the Fort Berthold Reservation (Dockets Nos. 350-B and 350-C) for an order receiving petitioners' exhibit number 39 in evidence. The motion has been opposed by the petitioners in Dockets Nos. 74 and 246 and by the petitioner in Docket No. 113. The Commission has determined that the motion should be granted, and in this brief opinion we will set forth our reasons.

The exhibit in question is an article and maps prepared by Russell Reid, Superintendent of the North Dakota Historical Society. Exhibit No. 39 was admitted in evidence in this case at the hearings which commenced on February 28, 1966. However, during the course of those hearings, on March 3, 1966, counsel for the petitioners in Dockets Nos. 74 and 246 made objection to the exhibit on the ground that it was prepared by a living person who was not called to identify the exhibit and be examined concerning its preparation. A motion to strike the exhibit was granted.

The Fort Berthold Reservation petitioners by the pending motion seek to have the exhibit received in evidence on the grounds that:

1. The article and accompanying maps strongly support their claim and are most important to their case.
2. Russell Reid was forced to retire in 1965 because of illness which had made it impossible for him to have

testified, and in July of 1967 he died.

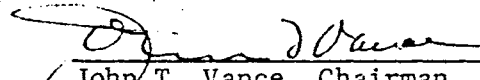
3. Since it appeared that works of living authors were part of the evidence in a great number of Indian claims cases, it was assumed that this exhibit would be admitted, and petitioners were not, therefore, prepared at the trial to present the facts concerning Mr. Reid's inability to testify.

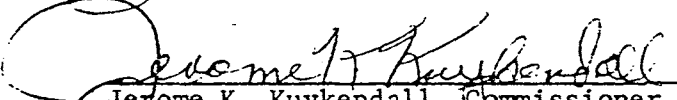
In addition to the objections made in support of the original motion to strike the exhibit, objections have been made to the untimely filing of the pending motion (some two years after the hearing at which it was stricken); a question whether the copies are true and correct (the reproductions appear to have unexplained boundary lines); there is nothing to support the maps relied upon; and service of the pending motion and proposed exhibit was not made on one of the attorneys of record.

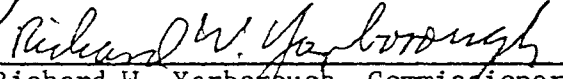
While the Commission would seriously question the value of the exhibit in resolving the questions at issue in this matter, it should be noted that the Fort Berthold Reservation petitioners consider it to "strongly support petitioner's claim" and to be "most important to petitioner's case." When the motion to strike the exhibit was made at the hearing on March 3, 1966, the petitioners' expert anthropologist, Dr. Edward M. Bruner, was testifying concerning the material upon which he relied in reaching his conclusions. Dr. Bruner testified that "In determining the basis for the 1860 line, I looked through a lot of documents and I decided to rely upon really very few." (Tr. 444). He then cited four other exhibits. Dr. Bruner continued, "Then, I also relied upon two other documents, Petitioner's Exhibit Number 39 and Petitioner's Exhibit Number 154, which referred to a map prepared by a man named Russell Reid. 154 and 39." (Tr. 444, 445). Apparently

Exhibit 39 (and Exhibit 154 which relates solely to Exhibit 39) was a material document relied upon by anthropologist Bruner. And for that reason we believe the Commission should include the exhibit in the material to be considered in deciding this case.

By our actions in relaxing the rules governing admissibility of documentary evidence we do not mean to establish any precedent. The circumstances surrounding Exhibit 39 are unfortunate. But in view of the reliance of petitioners and their expert on the exhibit, we deem it proper to have it a part of the record in this case. The objections on the grounds that the copies may not be true and correct will be considered in evaluating the evidence in this case. If Exhibit 39 is not a reliable representation of tribal boundaries, that should and will be considered in connection with Dr. Bruner's conclusions.


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner

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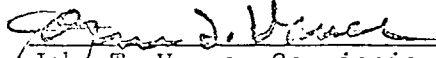
ORDER ADMITTING ADDITIONAL EVIDENCE

Upon consideration of the motion filed on May 1, 1968, by petitioners in Docket Nos. 350-B and 350-C for an order receiving petitioners' Exhibit No. 39 in evidence, and the opposition thereto filed on May 6, 1968, by petitioners in Docket Nos. 74 and 246 and by petitioner in Docket No. 113, and for the reasons set forth in the opinion this day filed herein,

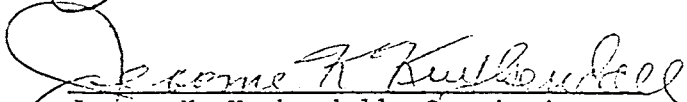
IT IS HEREBY ORDERED that the document described in petitioners' motion, identified as Exhibit No. 39, be, and the same is hereby admitted in evidence in the above-entitled case.

IT IS FURTHER ORDERED that the Clerk mark said exhibit as set forth in petitioners' motion and attach the same to the record in the above-entitled case.

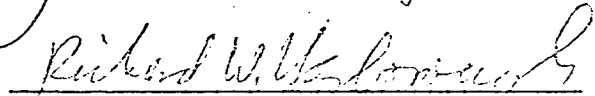
Dated at Washington, D. C., this 3rd day of July, 1968.



John T. Vance, Commissioner



Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner