

BEFORE THE INDIAN CLAIMS COMMISSION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,)	Docket No. 113
)	
RED LAKE BAND, AND PETER GRAVES, ET AL.,)	Docket No. 246
ex. rel. RED LAKE BAND,)	
PEMBINA BAND, AND KATHERINE CARL BARRETT)	
ET AL., ex. rel. PEMBINA BAND,)	
JOHN B. AZURE ET AL., ex. rel. CHIEF LITTLE)	
SHELL'S BAND OF PEMBINA CHIPPEWA INDIANS,)	
)	
THE LITTLE SHELL BAND OF CHIPPEWA INDIANS,)	Docket No. 191
AND JOSEPH H. DUSSOME ET AL., ex. rel.)	
said Band,)	
)	
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S)	Docket No. 221
RESERVATION, MONTANA, AND JOE CORCORAN,)	
ex. rel. CHIPPEWA CREE TRIBE OF THE)	
ROCKY BOY'S RESERVATION,)	
BLANCHE PATENAUDE ET AL., ex. rel. LITTLE)	
SHELL BAND OF INDIANS AND THE CHIPPEWA)	
CREE TRIBE,)	
)	
THE THREE AFFILIATED TRIBES OF THE FORT)	Docket Nos. 350-B
BERTHOLD RESERVATION,)	and 350-C
)	
Plaintiffs,)	
)	
V.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 30, 1970

FINDINGS OF FACT

1. Plaintiff in Docket No. 113, Turtle Mountain Band of Chippewa Indians, is an organized band of American Indians with a tribal organization recognized by the Secretary of the Interior as having authority to represent the band. The members of the Turtle Mountain Band plaintiff are largely descendants of that group of Plains-Ojibwa who signed the McCumber Agreement of 1892.

The Pembina Band, plaintiff in Docket No. 246, is an identifiable group of American Indians, whose members generally are descendants of the Plains-Ojibwa who moved to the White Earth Reservation in Minnesota after 1873. Plaintiffs in Dockets 191 and 221 claim to be successors to the interests of Little Shell and his followers. Little Shell and his followers left the negotiations with the McCumber Commission and refused to sign the McCumber Agreement. We find that these plaintiffs together constitute an identifiable group of American Indians, many of whose members are descendants of Chief Little Shell and his followers. The Little Shell Band is sometimes known as the Chippewa-Cree Tribe.

2. Plaintiff in Dockets 350-B and 350-C, The Three Affiliated Tribes of the Fort Berthold Reservation, is an identifiable group of American Indians entitled to maintain an action under the Indian Claims Commission Act. It is the successor in interest of three Indian tribes, the Arikara, the Mandan, and the Hidatsa (also known as the Gros Ventre).

3. The Indians who occupied the prairies of North Dakota were a distinct and identifiable group, although early errors in identification and semantic confusion led at times to a proliferation of names and identification of them as a part of the woodlands Chippewa from whom they separated. In the seventeenth century, when first contacted by white explorers, the woodlands Chippewas were in the area around Lakes Huron and Superior. Beginning in the early part of the eighteenth century, they started pushing their way westward across Minnesota, gradually displacing the Sioux and driving them across the Mississippi

and south to the Minnesota River. By the end of the eighteenth century the Chippewas had extended their occupation through northern Minnesota and across the Red River into northeastern North Dakota. They had a large number of villages, bands and local divisions scattered over a region extending a thousand miles from east to west, and many of these bands came to be known by the name of the village, lake or river near which they resided. (See, Red Lake, Pembina and White Earth Bands v. United States, 6 Ind. Cl. Comm. 247, 254 (1958), aff'd in part and rev'd. in part 164 Ct. Cl. 389 (1964)).

4. Around the end of the eighteenth century, prior to the advent of white traders in the area, the formerly woodland oriented group of Chippewas moved out beyond the border of the plains in pursuit of the buffalo. They successfully reoriented their culture to life on the plains, developing the bison-hide tipi, the Red River cart, hard soled footwear and new ceremonial procedures. Around 1800, these Indians were hunting in the Turtle Mountain area. These Indians who adapted to the plains formed a group which may best be identified as the Plains-Ojibwa.

5. The Plains-Ojibwa are an identifiable group of American Indians on whose behalf an action may be maintained under the Indian Claims Commission Act. The Plains-Ojibwa have also been known by many other names, among which are Bungi, Saulteaux, Turtle Mountain Band, Pembina Band, Little Shell Band, Chippewa and Chippewa-Cree.

6. The Plains-Ojibwa consisted of two distinct ethnic groups, the full bloods and the mixed bloods or half-breeds. The full blood group

was distinctly in the minority. The mixed blood culture consisted of a mixture of European and Indian elements. While the mixed bloods had their own government distinct from that of the full bloods, the two groups usually acted in concert, particularly in their use of the land. In the Turtle Mountain area, the mixed bloods seemed to have recognized the head chief of the full blood element as their chief executive.

The ambiguous position of the mixed bloods was described by J.B. Bottineau in his petition on behalf of the Turtle Mountain Indians to the House Committee on Indian Affairs in 1895 (Pl. Ex. 150, Dkt. 113, at p. 8):

The half-breed Indian, especially, has suffered more than the full-blood did, in his effort to secure the home he had located and improved upon said original reservation, because the unfortunate half-breed Indian has, so far, never had his position or status fixed by the United States. He is one thing to the Government to-day, and, perhaps, to-morrow he is metamorphosed into an entirely different person.

When his vote in an election is wanted, he is a white man; but should he have taken up a homestead upon the public lands, and be living on it, and the tract happen to be coveted by a white man, why, then the white man squats on the land and files a contest against the half-breed in the land office on the ground that the half-breed is an Indian and as such he cannot hold against the white man. The result is the white man wins every time. (emphasis in original).

In negotiating the cession of the subject lands, all parties assumed that the Turtle Mountain Band properly included mixed bloods as well as full bloods. The instructions from the Commissioner of Indian Affairs to the McCumber Commission informed the commissioners that they were to take an accurate census of "only those Indians who

have just claims upon the government, and are, as a consequence, proper ones with whom to negotiate." (Pl. Ex. 142, Dkt. 113, at p. 13). The census was to be broken down into various categories which included distinctions between Indians who were full bloods and those who were mixed bloods.

7. The mixed bloods welcomed the full bloods into their hunting parties. Alexander Ross told of an incident in which full bloods accompanying such a hunting party attacked a Sioux party near the Cheyenne River. An arrangement for peace with the Sioux was made by the mixed bloods. (Pl. Ex 77, Dkt. 246, at pp. 269-271).

8. Dr. James H. Howard, witness for plaintiffs, testified as to the location of a number of village and hunting sites in North Dakota. Stump Lake was remembered by Indians as the site of Black Duck Village. Black Duck was a sub-chief of the Turtle Mountain Band.

Graham's Island, on the north side of Devil's Lake, was the site of a great battle between the Chippewa and Sioux in 1852.

West of Rugby, North Dakota and south of Round Lake, was a camping site to which the Plains-Ojibwa came on hunts. Women gathered wild berries in the area while the men were hunting.

Buffalo Lodge Village, near the present Buffalo Lodge Lake, was the site of a stockaded Plains-Ojibwa village occupied until 1824 or 1825 when the Sioux drove them out and destroyed the village. Thereafter the Plains-Ojibwa visited the area, but they never again built a permanent village there.

Dog Den was a hunting site for the Plains-Ojibwa. The hill was

famous as a lookout for enemies and was so used by the Sioux as well as by the Plains-Ojibwa.

9. The mixed bloods, accompanied by full bloods, engaged in annual buffalo hunts, moving west and south from St. Joseph, located on the banks of the Pembina River. Details of these hunts were given in 1851 by Father Richer LaFleche (Pl. Ex. 55, Dkt. 246). He described the area in which they hunted as:

"extending between the Assiniboine River to the North the Red River to the East, the Cheyenne River and the Hill des Prairies to the South, to the West, a line drawn from the source to the mouth of the Mouse River..."

He went on as follows to describe the exclusive use of the area by the Plains-Ojibwa:

"A few half-breeds caught by surprise in some lonely spot had been massacred by the Sioux from time to time, but peace had never been openly broken between the two peoples. Up to this year, the half-breeds have always had the run of this territory which they consider as being their fatherland.... Before they settled at the Red River, no savage nation had dared occupy this desert which formed a dividing wall between the warring tribes."

10. A common landmark in accounts of hunting trips by the Plains-Ojibwa was the Missouri Coteau. This is a ridge left by a retreating glacier. It is most clearly seen running due east of the Missouri River through Dog's Den. It is also found further east along the Souris River and the Turtle and Pembina Mountains. See Map, Pl. Ex. 2, Docket 113. Father LaFleche indicated that during the hunt of which he wrote they broke into two camps, and the main camp "set out for Dog House, a way which we were accustomed to following". This was in the direction

of the Sioux. He went on to state:

Our march continued without further incident to the proximity of Prairie Hill (Coteau-des-Prairies) or Big Hill (Grand Coteau....)

There they encountered a Sioux camp. The Sioux told them, "We came here to camp, farther than usual, in order to do some trading with the half-breeds." Thus the Missouri Coteau is described as a usual hunting area for the Plains-Ojibwa and as a place to which the Sioux did not usually venture.

11. The territory of the Plains-Ojibwa extended into the area north of the Canadian border, and Plains-Ojibwa from the north often followed the buffalo south.

Describing exploring expeditions in 1857 and 1858, Henry Youle Hind wrote (Pl. Ex. 22, Dkt. 113, at p. 179):

There are now two distinct bands of buffalo hunters, one being those on Red River, the other of the White Horse Plain, on the Assiniboine. Formerly these bands were united, but, owing to a difference which sprung up between them they now maintain a separate organization, and proceed to different hunting-grounds. The Red River hunters go to the Coteau de Missouri, and even as far as the Yellow Stone River; the White Horse Plain settlers generally hunt west of the Souris River, and between the branches of the Saskatchewan, but also over the same grounds as their Red River brethren."

12. In 1845, Father Belcourt wrote that the hunters of the Red River, i.e. the Plains-Ojibwa of North Dakota, had established their winter quarters at the extremity of Turtle Mountain and on the Mouse River. (Pl. Ex. 205, Dkt. 113, at pp. 136-137).

In 1854, Governor Stevens in his report to the War Department on his "Explorations for a Route for the Pacific Railroad" stated that

the Red River half breeds range from east of the Red River to the Mouse River valley. (Pl. Ex. 73, Dkt. 246, at p. 148).

H. S. Tanner's map of 1834, Pl. Ex. 12, Dkt. 113, indicated that the Plains-Ojibwa, there called the "Chippeway", occupied the area north of Devil's Lake at least as far west as a line due north from the west bank of Devil's Lake. In that map, no other tribe was shown in the area presently claimed by the Chippewa plaintiffs.

13. From 1800 to 1825, several explorers indicated that some Assiniboine Indians were found in the area claimed. One report placed Cree in the area as well. One such report was of Alexander Henry, who in the summer of 1806, journeyed to Mandan villages. He found Cree and Assiniboine camped around the western end of Turtle Mountain. He identified the Sioux frontier as the ridge adjoining Dogs Den. North of this, he indicated, they need dread only the Assiniboines.

In 1804-1805, Lewis and Clark located the Assiniboines as follows (Def. Ex. 81, at p. 217):

...between the Assiniboin and the Missouri, are two bands of Assiniboins, one on the Mouse river...the other residing on both sides of the White river. Beyond these, a band of Assiniboins ... wander on the heads of Milk, Porcupine, and Martha's rivers; while still further to the north are seen two bands of the same nation ... roving on the Saskaskawan.

In 1825, General Henry Atkinson reported that the Assiniboines:

inhabit the country from the head of Milk River, east, on both sides of the parallel of latitude 49, back towards Lake Traverse. They frequently visit the Missouri, and push war parties across against the Mandans and Minatares. (Def. Ex. 85).

14. By 1849, however, the Cree and Assiniboine in the United

States were west of the Souris (Mouse) River.

In 1849, Father Belcourt described the location of Indian tribes in the area as follows (Def. Ex. 98, at p. 37):

The Crees and Assiniboins regard themselves as equally masters of these lands with the Chippewas.... Nevertheless, the Mouse river, which, in its course, approaches within thirty miles of the Missouri, and empties itself into the Assiniboin river, about ninety miles from its mouth, would appear to be the true line, which is never passed by the hunters of the tribe, except perhaps toward its source where it approaches Moose mountain [in Canada], which is a point where they are accustomed to concentrate, and for the most part reside.

Maps introduced by defendant, drawn by Dr. W. R. Hurt, (Def. Ex. 195-199), show the Assiniboines to have been west of the White Earth River after 1780. The White Earth River is west of the area claimed by the Chippewa plaintiffs.

15. After 1849 the Plains-Cree did not occupy any lands in the portion of North Dakota claimed by the Chippewa plaintiffs. There was much trade between the Cree and Plains-Ojibwa in Canada, and occasionally Cree traded or joined war parties with the Plains-Ojibwa in North Dakota.

16. After the signing of the 1825 Treaty of Prairie du Chien, 7 Stat. 272, the Chippewa and Sioux defined the boundary between their tribes west of the Red River of the North. Their agreement became known as the Sweet Corn Agreement after the Sioux chief who executed it. In 1869, military officials forwarded to the Commissioner of Indian Affairs a copy of this agreement which was in the possession of a Sioux chief. It described the dividing line west of the intersection

of the Red River with the mouth of the Buffalo River, as follows:

. . . then following the course of Red River down to the mouth of Goose River, then ascending the course of Goose River up to its source, then taking a westerly course and passing through the centre of Devil's Lake; after leaving the lake, continuing its westerly course to Maison-du-Chien, from thence taking a northwesterly direction to its terminus at a point on the Missouri River within gunshot sound of Little Knife River. (Pl. Ex. 40, Dkt. 113).

In 1863, the Pembina Band described its boundaries somewhat differently to Governor Alexander Ramsey, with whom it was negotiating.

The description was as follows:

***Thence up the main channel of the Cheyenne River to a point about which they could not agree among themselves, to Dog House, a hill on the Missouri Coteau; thence north to the Mouse River; thence along Mouse River to the British boundary." (Pl. Ex. 1, Dkt. 113, p. 74).

17. After 1800, the Arikara, Mandan and Hidatsa were located west of the west branch of the Souris River. In the summer of 1851, during a cholera epidemic at Fort Berthold, some of the Fort Berthold Indians dispersed for a short time to sites as far east as the Turtle Mountains. They remained in these sites only through the single summer.

18. In the 1800's the buffalo herds disappeared and white settlers increasingly moved into the Chippewa lands in North Dakota. In 1892, three commissioners were appointed by the President to negotiate with the Turtle Mountain Chippewas for a cession of their lands. They were instructed to take a census of the Turtle Mountain Band, to obtain a cession of its lands and to arrange for its settlement on a reservation.

In 1891, Agent Waugh of Fort Totten had selected a committee of 16 full bloods and 16 mixed bloods to ascertain who were American Indians and members of the band. This committee was requested by the McCumber Commission to assist in taking the census.

Little Shell and his followers desired a 30 square mile reservation at Turtle Mountain. When the commission refused to discuss this, Little Shell and his followers left the meeting, and the Committee of 32, which had assisted the McCumber Commission in the census, represented the tribe in negotiating an agreement to cede the land.

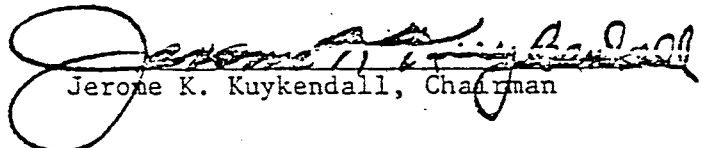
By the terms of the McCumber Agreement, the United States acquired all the land in North Dakota owned by the Plains-Ojibwa, with the exception of the reservation described in Article 2 of the Agreement. In 1904, Congress approved the McCumber Agreement with amendments, and required that a majority of the members of the Turtle Mountain Band, in general council lawfully convened for that purpose, consent to the amendments and release all claims against the United States before payments would be made. A majority of those attending the meeting of the band approved the agreement as revised on February 15, 1905. Thus the valuation date for the land in question is February 15, 1905.

19. Considering all the evidence, we find that the Plains-Ojibwa exclusively used and occupied for a long time prior to 1905 the following area:

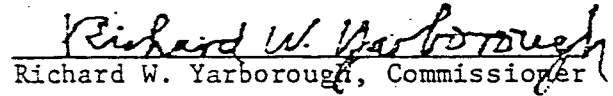
Beginning at the 98th parallel where it crosses the International Boundary, running due south along the 98th parallel to the point at which it intersects the Middle Branch of the Forest or Salt River; then southwest to the northeasternmost point on Stump Lake,

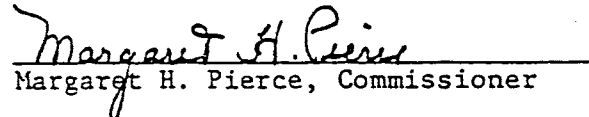
which is the point where Stump Lake is intersected by the stream running between Stump Lake and Coon Lake; then westerly through the Devil's Lake complex to the southeastern corner of the town of Minnewaukan; then in a southwesterly direction to Dog Den Butte, which is a part of the Missouri Coteau; then in a northerly direction to the southwest tip of Buffalo Lodge Lake, which is where that Lake is intersected by South Egg Creek; then due west to the western branch of the Souris or Mouse River; then up the Souris River through the center of Lake Darling, then continuing up the Souris River to the International Boundary; then east along the International Boundary to the place of beginning.

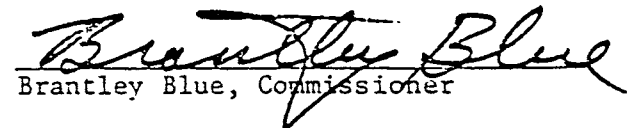
The Plains-Ojibwa did not exclusively use and occupy for a long time prior to 1905 any of the remainder of the land in North Dakota claimed in this case by plaintiffs.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner