

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX NATION, ET AL.,)	Docket No. 74
)	
THE CHIPPEWA CREE TRIBE OF)	Docket No. 221-A
ROCKY BOY RESERVATION,)	
)	
THE THREE AFFILIATED TRIBES OF)	Docket Nos. 350-B
THE FORT BERTHOLD RESERVATION,)	and 350-C
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA)	
)	
Defendant.)	

Decided: August 26, 1970

FINDINGS OF FACT

1. The Sioux Tribe of Indians is an identifiable group of American Indians entitled to maintain an action under Section 2 of the Indian Claims Commission Act. Traditionally the Sioux were divided into seven major groups: (1) Medawakantons, (2) Wahpakootas, (3) Sissetons, (4) Wahpetons, (5) Yanktons, (6) Yanktonais, (7) Tetons. Each of the seven Sioux tribes was sub-divided into several bands, and these bands were in turn split into smaller groups.

Each of the plaintiffs, the Rosebud, Standing Rock, Pine-Ridge, Cheyenne River, Crow Creek, Lower Brule, Santee and Fort Peck Sioux is an organized tribe of American Indians, recognized by the Secretary of the Interior as authorized to represent each tribe respectively. Each is entitled to maintain an action under Section 2 of the Indian Claims Commission Act. Together these eight plaintiffs are the successors in

interest to the Sioux tribes or bands who were parties to the Treaty of April 29, 1868, 15 Stat. 635. The aboriginal title claim which is presently before the Commission is asserted on behalf of the Yanktonai and Teton Sioux. All plaintiffs except the Sioux of the Santee Reservation are comprised at least in part of Yanktonai or Teton descendants, or both. The Santee Sioux however, are descendants of Medawakanton and Wahpakoota Sioux.

2. 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 Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana is an identifiable group of American Indians entitled to maintain an action under the Indian Claims Commission Act.

4. In the middle of the seventeenth century, the Sioux were living at the headwaters of the Mississippi River. The pressure of other Indian tribes drove the Tetons and Yanktonais southward and westward. They entered the lands here at issue during the last part of the eighteenth century, inhabiting them along with the Arikara, Mandan and Hidatsa. Later, the Sioux came to exclusively occupy much of the land formerly occupied by the Arikara, Mandan and Hidatsa, as these three tribes were decimated by smallpox epidemics and became unable to withstand hostile attacks.

5. In 1792, D'Eglise, a trader, ascended the Missouri River to the Mandan villages. In describing D'Eglise's trip, Zenon Trudeau

wrote that the Mandan living in fortified villages were perpetually at war with the Sioux.

In 1794 and 1795, Jean Baptiste Truteau, a trader, gave detailed accounts of his travels in the Missouri valley. Above the mouth of the White River he encountered a group of Sioux. The spokesman said he was a Yankton Sioux "who lived on the Des Moines River". Truteau continued:

But they had hidden from me that there were only three lodges of their nation and that this band was largely composed of Teton Sioux, a ferocious people, little civilized, who wandered around constantly for food *** The vast prairies, which they crossed north of the Missouri, were presently stripped of wild animals and they were obliged to hunt the buffalo and wild cows on the banks of the Missouri, and even to cross over to the west bank for hunting *** (Def. Ex. 113, pp. 268-269).

Thus the Tetons were described as hunting in the area here in issue.

Truteau further indicated that Sioux hunted in the subject area and traded their catch with other Sioux farther east in present day

Minnesota:

The northern part of the Missouri is inhabited by the great Sioux nation, almost all of whom are enemies of the Mandans, the Gros Ventres and the Ricaras, and other nations also. The Sioux nation are of those who hunt beaver; and almost every spring they obtain great quantities from here, which they trade with those Sioux who frequent the St. Peter's River and that neighborhood. (Def. Ex. 113, p. 301).

Finally, Truteau was warned that the Tetons occupied the subject area as far as the Arikara villages:

Do you think, they said to me, you can escape the hands of the Sioux, who border the Missouri on both sides, even to the village of the Arikaras and even above that. They are warned, they will hunt for you *** for they said to me, the Tetons do not have a good disposition. (Def. Ex. 113, p. 273).

At this date the Arikaras were being driven north by the Sioux toward Knife River in North Dakota.

6. The first American explorers up the Missouri were Lewis and Clark in 1804. They reported on the location of the Sioux bands, placing the Tetons and Yanktonais in approximately the southern half of the claimed area. Their locations were given as follows:

"Yank-ton (of the north or plains) -- From the head of the river St. Peters and Red river of the Missouri, about the Great Bend."

"Te-ton, Bois brule -- On the east side of the Missouri, from the mouth of the White river to Teton river."

"Te-ton, O-kan-dan-das -- From the mouth of the Cheyenne river, on each side of the Missouri, as high as the Rickaras."

"Teton-sah-o-ne -- On each side of the Missouri, from the Rickaras, to the mouth of Wamconne river."

7. In 1805, Lieutenant Zebulon M. Pike explored the Upper Mississippi River. He stated that the Yanktonais and Tetons wandered in the area between the Lower Red River and the Missouri, with the Tetons dispersed on both sides of the Missouri, "on the north principally from the river Chienne up; and on the south, from the Mahas to the Minetares, or Gros Ventres." (Pl. Ex. 26, pp. 343-344).

In 1806, Alexander Henry, a British trader, placed the Sioux in the northern portion of the claimed area. He described the ridge adjoining Dog Den Butte as the Sioux frontier. Dog Den Butte was used as a lookout for enemies by the Sioux and by the Plains-Ojibwa. In 1824 or 1825, the Sioux drove the Plains-Ojibwa out of a stockaded

village near Buffalo Lodge Lake, north of the claimed area, and destroyed the village. See, Turtle Mountain Band v. United States, 23 Ind. Cl. Comm. 315, 330-331, 333 (1970), Findings of Fact 8 and 13.

8. George E. Hyde has written several books on the Sioux and other Indians of the plains. One of these, introduced by defendant, is Spotted Tail's Folk, A History of the Brule Sioux. Mr. Hyde wrote:

"When Spotted Tail was born in 1823, his tribe was living on White River, west of the Missouri, in what is now southern South Dakota. At that date there were still many old men and women in the tribe who could remember a time in their youth when the Teton Sioux were all east of the Missouri, roving afoot across the vast area of the Coteau des Prairies that stretched from western Minnesota to the valley of the Missouri. These old people had seen with their own eyes the great fortified villages of the Palani or Arikara Indians, their enemies, who at that early period held strongly the land on the Missouri in the vicinity of the Great Bend, below the present city of Pierre. They had seen these villages depopulated by three or more great epidemics of smallpox, and they had taken part in the Sioux attacks that in the end of the eighteenth century had driven the weakened Palanis northward up the Missouri, leaving their lands in the possession of the Sioux," (Def. Ex. 249, p. 3).

In 1825, General Henry Atkinson and Major Benjamin O'Fallon concluded treaties with six Sioux tribes on the Upper Missouri. They described the location of various tribes. They described the Yanktonais as ranging between the Missouri and St. Peter's Rivers, embracing the headwaters of the James River. The Saone portion of the Tetons was described as inhabiting both sides of the Missouri, from the Teton (Bad) River to fifty miles above the "Chayenne River", and as ranging farthest from the Missouri on the north side. The Hunkpapa band of

Tetons was described as roving between the Missouri and the head waters of the St. Peter's River.

9. Maximilian, a German prince, traveled up the Missouri River by steamboat beginning in April 1833. He described the country inhabited by the Sioux as extending "from Big Sioux River, between the Missouri and the Mississippi, down the latter to Rock River, and northwards to Elk River; then westwards, in a line which includes the sources of St. Peters River, and reaches the Missouri below the Mandan village, stretches down it, crosses it near Heart River, and includes the whole country on the western bank, to the Black Hills about Teton River, as far as Shannon River." (Def. Ex. 123, p. 305).

When Maximilian arrived at a point about twelve miles below Fort Clark, he encountered a camp of the Yanktonai, who generally lived on the Cheyenne River of North Dakota which empties into the Red River near Devil's Lake. He reported that they generally came to the Missouri River in the winter. (Def. Ex. 123, p. 342).

In 1835, Joshua Pilcher, the Sioux sub-agent on the Missouri, described Yanktonai country as extending as high as the Heart River near the Mandans, stretching east to the St. Peters River.

10. In 1855, Edwin T. Denig, principal trader at Fort Union, described the Sioux boundary as taking in Devil's Lake and areas further north, and then as striking the Missouri at the mouth of the Apple River. He described the Yanktonais as hunting from the Apple River to the mouth of the Little Cheyenne, north to the neighborhood of Devil's Lake and east along the Coteau de Prairie, but never going as low down as the

head of the James River. He indicated that after 1844, they tended to follow the buffalo north and northwestward.

In 1855, General William S. Harney made detailed reports on the Sioux and their country. He described the country of one band of Yanktonais as from the James to Mouse Rivers, on the east side of the Missouri River. The country of two other Yanktonai bands was described as from Fort Pierre to the mouth of the Mouse River. The Mouse River is north of the claimed area.

11. After the signing of the 1825 Treaty of Prairie du Chien, 7 Stat. 272, the Sioux and the Chippewa 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. The line passed through the center of Devil's Lake, westerly to Maison-du-Chien, and then northwesterly to a point on the Missouri River within gunshot sound of the Little Knife River. A copy of this agreement was forwarded to the Commissioner of Indian Affairs in 1869. See, Turtle Mountain Band v. United States, 23 Ind. Cl. Comm. 315 (1970).

12. By 1750, the Mandans were concentrated in at least six, and possibly as many as thirteen, towns within twenty miles of one another in the vicinity of the Heart River in North Dakota. Their population was estimated to be between 7,000 and 15,000. They maintained a close relationship with the Hidatsa. By 1750, three villages or bands of Hidatsa were located further upstream from the Mandan, in the vicinity of the Knife River. The Hidatsas were comprised of a loose association

of closely related bands that ranged northward along the Missouri and Lower Yellowstone, the Little Missouri, Mouse River, Turtle Mountains, and even the Devil's Lake region. Occasionally the Hidatsas would all move back to the north bank of the Knife River to plant corn, but just as often, they remained on the prairies during the summer, hunting buffalo.

A smallpox epidemic in the 1780's greatly reduced the population of these tribes. Before the epidemic, the Mandan were more numerous than the Hidatsa. However, after the epidemic the Hidatsa were more numerous because their widely scattered communities were better able to survive the spread of smallpox. After this epidemic, the Hidatsa population was estimated at between 2,100 and 2,500.

The Mandan population was so reduced that they became unable to resist the pressure from the Sioux. The Mandan resettled below the Hidatsa, who refused to give them permission to build their villages above the Knife River. By 1796, the Mandan were located in three villages and the Hidatsa in two around the Knife and Turtle Rivers. During the next forty years the location of Mandan and Hidatsa villages shifted back and forth from above the Knife River to as far south as the Cannonball River. One group of Hidatsa maintained a nomadic existence.

In 1837, another smallpox epidemic broke out. This is reported to have reduced the Mandan population to no more than 113 persons. By 1839, this remnant joined the Hidatsas. A small group of Mandan moved to the east of the Missouri from the Knife for a short time in 1840.

The Hidatsa suffered somewhat less severely from the smallpox epidemic since some of them were out on nomadic excursions when the epidemic struck. By 1845, they had consolidated at the mouth of the Little Knife River, well north of the area claimed by the Sioux. In 1845, under an agreement with the American Fur Company, Like-A-Fishhook Village was established and was occupied by all the Hidatsa and many of the Mandans who had been living at Fort Clark Village with the Arikara.

13. Prior to 1781, the Arikara occupied villages on both sides of the Missouri between the White River in South Dakota and the present day border between North and South Dakota. The Arikara population at that time was around 15,000. A smallpox epidemic in 1781 greatly reduced their numbers. From 1794 to 1796, the Sioux drove the Arikara out of their villages and the Arikara moved north on the Missouri to be near the Mandan villages in North Dakota in order to trade. In 1799 the Arikara quarreled with the Mandan and moved downstream. By 1804 they were living in three villages above the mouth of the Grand River in present South Dakota. Attempts were made to restore trade with other Indian tribes. The Arikara population around this time totalled about 2,600 to 3,000 persons. One of these three villages was abandoned before 1811.

The Arikara interfered with river traffic and were generally regarded as unfriendly to the whites. In 1823, General Ashley's party was attacked and a number of whites were killed or wounded. This led to a punitive expedition under Colonel Leavenworth, joined by a number

of Sioux. Although the attack failed to penetrate the village, the Arikara slipped out and scattered to other areas, but reoccupied their villages in 1824. In 1832 they dispersed again because of drought, scarcity of game, fear of United States military reprisals and pressure from hostile Sioux.

In dispersing in 1832, one group went to the vicinity of Fort Clark, another to the Platte River and others to the Little Missouri River and the Black Hills where they led a nomadic life. In April 1837, Arikaras who had been camping in the Black Hills and on the Little Missouri went to Fort Clark. Most of them moved into Mandan villages and a smaller number took residence with the Hidatsas. In July smallpox broke out, and by September 1837 one half of the Arikaras and at least seven eighths of the Mandans had died from the disease.

In September 1837, the remnants of the Mandan, fearing the Arikaras would unite with the Sioux, moved to the other side of the Missouri and in 1838 the Arikaras took possession of the larger Mandan village. A few Mandans remained with the Arikara until June 1838, when, incensed by Arikara theft of their women they joined the Hidatsas. In July 1838, however, the Hidatsas moved downriver to the smaller Mandan village to be near the Arikaras for mutual protection against the Sioux. In 1839 the Arikaras quarreled with the Hidatsas, and the Hidatsas and Mandans moved upriver.

The Arikaras remained in the lower Knife River Valley around Fort Clark (north of the Sioux's lands) until 1861 when the trading post at Fort Clark was abandoned by the American Fur Company. This led to the

Arikaras' moving further north in about 1862 to Like-A-Fishhook Village on the east bank of the Missouri opposite Fort Berthold where the Mandan and Hidatsa were already settled. They continued to live here even after that village was included in the Executive Order reservation set up for the Three Affiliated Tribes in 1870.

14. Reports and journals of traders and others in Sioux country, accounts, reports, journals and correspondence of Sioux agents and other government officials, and reports of explorers and travelers, beginning around 1800, indicate that no later than the 1830's and continuing until the taking date, the Sioux exclusively used and occupied the area bounded as follows:

- (1) Beginning at a point in the middle of the Missouri River opposite the mouth of the Heart River (in North Dakota), northerly in a direct line to the westernmost point on the limit of Bismarck, North Dakota;
- (2) then northerly in a direct line to Dog Den Butte;
- (3) then northeasterly in a direct line to the southeastern corner of the town of Minnewaukan, North Dakota;
- (4) then southwesterly in a direct line to the point at which the James River crosses the western limit of the town of Manfred, North Dakota;
- (5) then westerly and southerly down the James River to its junction with Moccasin Creek (north of Stratford, South Dakota);
- (6) then southeasterly in a direct line to the northernmost point of Lake Kampensa (on the south side of Highway 20);
- (7) then westerly in a direct line to the mouth of Snake Creek on the James River (south of Ashton, South Dakota);
- (8) then westerly up the South Fork of Snake Creek to its source (south of Seneca, South Dakota);
- (9) then in a direct line south-southwesterly to the

western tip of Rice Lake, which is the source of North Medicine Creek (also called the northern branch of East Medicine Knoll Creek);

(10) then southwesterly down North Medicine Creek and Medicine Knoll Creek to the junction of Medicine Knoll Creek with the Missouri River;

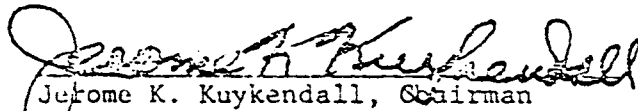
(11) then northerly up the middle of the Missouri River to the point of beginning.

(All of the above-described locations are as depicted on the latest editions of the U. S. Geological Survey maps, Western United States 1:250,000 series.)

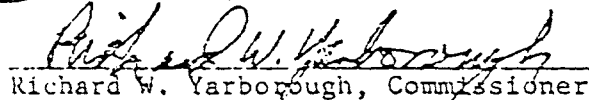
These lands were ceded by the Treaty of April 29, 1868, 15 Stat.

635. This treaty was ratified on February 16, 1869, and proclaimed on February 24, 1869. The valuation date of the subject lands is February 24, 1869.

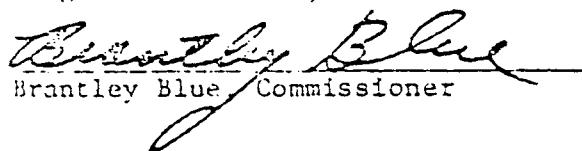
The Tetons and Yanktonais did not exclusively use and occupy for a long time any other land in North Dakota east of the Missouri River within the boundaries described in Sioux plaintiff's proposed Findings of Fact No. 4, filed May 31, 1963.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner