

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX NATION, ET AL.,	)	Docket No. 74
	)	
THE YANKTON SIOUX TRIBE OF INDIANS,	)	Docket No. 332-C
	)	
Plaintiffs,	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 2, 1970

ADDITIONAL FINDINGS OF FACT \*/

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 to 12, inclusive, heretofore made on the 27th day of August 1969 (15 Ind. Cl. Comm. 577), and amended finding number 12, made on the 10th day of September 1969 (21 Ind. Cl. Comm. 371).

13. The Yankton Sioux Tribe or Band of Indians is an identifiable group of American Indians maintaining a tribal organization recognized by the Secretary of the Interior as having authority to represent that tribe or band. The Yankton Tribe is authorized to maintain this suit under Section 2 of the Indian Claims Commission Act.

14. The Treaty of Fort Laramie of 1851 (11 Stat. 749) was entered into by the United States and "the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico, viz, the Sioux or Dakotahs, Cheyennes, Arrapahoes, Crows, Assiniboines,

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\*/ In these findings the following notations will be used: "Sioux Ex." refers to exhibits of the Docket No. 74 plaintiffs. "Yankton Ex." refers to exhibits of the Docket No. 332-C plaintiffs admitted into evidence at the hearing held February 20, 1967.

Gros Ventre, Mandans and Arrickaras." By Article 5 of the treaty the United States recognized title in the "Sioux or Dahcota Nation" (as that term was used in the treaty) to a designated tract of land (hereinafter "Sioux-Laramie land"). Six Sioux chiefs signed the treaty; their tribal or band affiliation was not specified. These signers have been identified as five chiefs of the Teton division of Sioux--four of the Brule Band, one of the Two Kettle Band--and one chief of the Yankton division. None of the signers has been identified as being a chief of the Yanktonais division of Sioux.

15. The Treaty of Fort Laramie was amended by the Senate and ratified, subject to acceptance of the amendment by the tribal parties. The amendment was accepted separately by the "Sioux of the Platte" and by the "Sioux of the Missouri." Five signatures appear on behalf of the "Sioux of the Missouri". Although the consent does not indicate tribal affiliation, three of the signers have been identified as being Yankton Sioux and two as being Teton Sioux--one of the Miniconjou Band, one of the Sans Arc Band. Ten signatures appear on behalf of the "Sioux of the Platte." No tribal affiliation was specified on the consent, but these signers have been identified as Teton Sioux--five of the Brule Band, and five of the Oglala Band. None of the signers of either of these consents have been identified as Yanktonais.

16. The term "Sioux or Dahcota Nation" as used in the Treaty of Fort Laramie is ambiguous. In its broadest context, the Sioux Nation is composed of seven divisions: (1) Medawakantons; (2) Sissetons; (3) Wahpakootas; (4) Wahpetons; (5) Yanktons; (6) Yanktonais; and (7) Tetons. The first four of these divisions are collectively

referred to as the "Sioux of the Mississippi"; the latter three as the "Sioux of the Missouri". The Sioux of the Mississippi were not part of the "Sioux or Dahcoteah Nation" treated with at Fort Laramie.

17. During the 1840's great numbers of settlers traveled west along the Oregon Trail in the valley of the North Fork of the Platte River, and along the Santa Fe Trail in the valley of the Arkansas River. This emigration precipitated great resentment in the prairie tribes which considered this land to be theirs alone. The heavy hunting by the emigrants and the extensive grazing by their domestic cattle caused a general diminishment in the number of buffalo on the prairie. The prairie tribes, being totally dependent upon the buffalo for their subsistence, reacted by petitioning the government for remuneration and by engaging in raids upon the traveling settlers.

18. The Indian tribes of the prairie were in constant warfare among themselves. The presence of American travelers on the prairie lessened the resources of the Indians and consequently intensified tribal warfare.

19. On October 20, 1847, Superintendent of Indian Affairs, Thomas H. Harvey, in his annual report, recommended that a general council of the plains Indian tribes be held for the purpose of entering into treaties of peace and friendship. Such a council was necessary to put an end to the many intertribal Indian wars. In his annual report of October 17, 1847, G. C. Matlock, agent of the Upper Missouri Agency, also recommended that a grand council of Indian tribes be held to foster peaceful relations among them.

20. The discovery of gold in California in 1848 resulted in heavier travel of settlers along the Platte River road. This increased travel further diminished the buffalo herd and intensified the attacks by the Indian tribes. Agent Thomas Fitzpatrick, of the North Platte Agency, was able to pacify these tribes by promising that the United States Government would soon pay them remuneration for the damage caused by American travelers.

21. On June 15, 1849, William Medill, Commissioner of Indian Affairs, wrote to Thomas Ewing, Secretary of the Interior, concerning the United States' "relations with the Indian tribes of the prairies..." He stated:

These Indians, of various tribes--the Comanches being the largest--are numerous and warlike. . . . Both of the routes to our possessions west of the Rocky Mountains--that by the Platte and that by the Arkansas Rivers--are through the section of country more or less occupied by them, and, as is well known, they caused much trouble and difficulty, and considerable public loss by attacks on our trains by the latter route during the recent war with Mexico; while emigrants by the other route have also suffered no little inconvenience from them, and in some cases serious losses also. More recently, however, principally in consequence of the great exertions of Agent Fitzpatrick, they have shown a more friendly disposition, and not only abstained from attacks upon our emigrants, but in many cases, have extended to them acts of kindness; but which seem to have been done in the expectation of some remuneration from the United States. . . . I think it would be sound policy to make them some annual compensation for the right of way through the country, and in consideration of the destruction of the buffalo therein. . . . as well as to conciliate their friendly feelings toward our emigrants. If such compensation were guaranteed to them, with the explicit understanding that it would be forfeited by any infraction of friendly relations on their part, it would operate as an inducement of

the strongest character to them to abstain from any hostile or unfriendly acts. I would therefore strongly recommend that measures be adopted . . . for entering into a treaty of friendship and amity, binding them to remain peaceable, and not only to avoid all aggressions upon our citizens, but to aid and assist them, so far as may be in their power, in passing thro' their country in safety; and stipulating for a suitable annual remuneration to them. . . . (Comm. Ex. 1: National Archives; Office of Indian Affairs, Record Group No. 75, Reports Vol. 6, pp. 193-195.)

22. On August 16, 1849, Orlando Brown, Commissioner of Indian Affairs, issued the following treaty instruction to Agent Fitzpatrick:

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 expedition or emigrants, but to afford them any kindness or facilities in their power, when needed. . . . In consideration of their entering into obligations of this kind, and such others as you and Superintendent Mitchell may think judicious and advisable, and for the unrestricted right of way through their country as well as compensation for the destruction of buffalo and game by our emigrants and troops for subsistence . . . the government is willing to allow a reasonable annual consideration in the shape of presents of useful articles of merchandize, agricultural implements, stock and etc. (Comm. Ex. 2: National Archives, Office of Indian Affairs, Record Group No. 75, Letters Sent Vol. 42, pp. 294-296.)

23. On September 20, 1849, Acting Commissioner A. S. Loughery wrote to Superintendent Mitchell with respect to treaty negotiations with the Prairie Indians. He stated:

Your views as to the proper time of holding negotiations are concurred in, and your instructions to Agent Fitzpatrick generally, are approved. You appear however to contemplate a much more extended and expensive arrangement than the Department has had in view, or that it understood from Agent Fitzpatrick was necessary or desirable. You look to including the Indians on the Platte and some of those on the Upper Missouri; though

you do not designate them, while it was contemplated to unite in the desired arrangement only those in the region of the Upper Arkansas, including the Comanches, Kioways, Cheyenne, Arapahoes and such other as live or range in or about the region through which the route to Santa Fe passes--not including any of those properly belonging to New Mexico--and very few of whom, it is believed, go so far north as the country inhabited by the Indians of the Platte or Upper Missouri, or as to come in contact with our emigrants by the upper route--that above the Platte--to our western possessions. . . . With respect to including the Indians of the Platte or Upper Missouri in the treaty, you have--doubtless inadvertently--omitted to mention any reasons therefor, and the Department is not aware of any. The Pawnees and Sioux are those likely to be most troublesome: with the former we have already as binding treaty stipulations as we well could have, while at least a portion of the latter are under similar obligations, and both can be held in check and controlled by the military force at the posts on the route to Oregon. . . . The best arrangement with Indians of the character of those in question is to keep them separate, to bind them to remain within the limits of their respective countries to abstain from warring upon their neighbors or upon our citizens, and to compel them to keep these obligations by military force; and this, it would seem to this office, can be done with respect to the Northern Indians without any new arrangements with them. . . .

These general suggestions are not made as the fixed and definitive views of the Department, but merely for the mature consideration of yourself and Agent Fitzpatrick. . . . If, after considering them fully and maturely, you should both be of the opinion that the plan suggested by you, will be the most advisable and be attended with the most beneficial result, the Department authorizes its being pursued. (Comm. Ex. 3: National Archives, Office of Indian Affairs, Record Group No. 75, Letters Sent Vol. 42, pp. 370-372.)

24. On October 13, 1849, in his annual report, Superintendent of Indian Affairs, D. D. Mitchell, wrote:

I have already had the honor to urge upon the Department the necessity of holding a general council to assume the character of a treaty, with the wandering tribes inhabiting the plains, extending from the Missouri to

the borders of Texas. . . . Justice as well as policy requires that we should make some remuneration for the damages these Indians sustain in consequence of the destruction of their game, timber &c., by the whites passing through their country. A small annual present of Indian goods distributed among the tribes, with reference to their numbers, localities, &c., would be deemed satisfactory by them, and at the same time serve as a guarantee for their good behavior. . . . The propriety of including the Sioux south of the Missouri river, will be obvious when it is taken into consideration that they are frequently found in large bodies along the Santa Fe road; and to my knowledge many of the depredations that have been charged against the Comanches and other southern tribes, have been committed by the Sioux residing south of the Missouri river. (Sioux Ex. 140: Annual Report of the Commissioner of Indian Affairs 1849, pp. 132-133.)

25. On March 18, 1850, the Senate Committee on Indian Affairs reported "A Bill to enable the President to negotiate with the Indians of the Prairies, south and west of the Missouri river to the northern line of the State of Texas, embracing the Indians of the Mountains, and including those of New Mexico." S. 157, 31st. Cong., 1st Session (1850); Cong. Globe, 31st Cong., 1st Session 547 (1850). This bill if enacted into law would have authorized the President to negotiate treaties "between the United States and the several tribes of Indians living and hunting south and west of the Missouri river, and north of the northern line of the State of Texas, commonly known and designated as the Indians of the Prairies and Mountains." S. 157, 31st Cong., 1st Sess. (1850). Among the documents submitted with the bill was a report from Superintendent Mitchell to the committee in which he stated, "The tribes proposed to treat with occupy the range of prairie and mountain country lying south of the Missouri river, and north of

Texas." S. Misc. Doc. No. 70, 31st Cong., 1st Sess. 4 (1850). Superintendent Mitchell also submitted a list of the tribes to be included in the treaty with an estimate of their respective populations. One of the tribes listed was "Sioux, (South Missouri)." S. Misc. Doc. No. 70, 31st Cong., 1st Sess. 3 (1850). The bill was passed by unanimous consent on April 29, 1850. Cong. Globe, 31st Cong., 1st Sess. 844 (1850). The House of Representatives never acted upon this bill.

26. Superintendent D. D. Mitchell, in his annual report, of September 14, 1850, stated:

No changes of importance have occurred during the present year which would seem to require any special action on the part of the department, so far as the border tribes are concerned. With the prairie, or wandering tribes, inhabiting the vast region of country lying between the Missouri and the state of Texas, the case is somewhat different.

In the beginning of the present year they were induced to believe that the government of the United States would make them some compensation for the depredations committed upon their soil, during the last four years, by troops, emigrants, and travelers passing through their country en route for Santa Fe, Oregon, and California. With these implied assurances they have remained comparatively quiet up to the present time; but they confidently expect that the conditional promises of the agents of the government will be carried out during the ensuing season. . . .

I had the honor, during the last winter, of having a bill introduced into the Senate "authorizing the President of the United States to hold a treaty with the various prairie and mountain tribes," the objects of which were to compensate them for the destruction of their game, timber, grass, &c., by the citizens and soldiers of the United States passing through their country without their knowledge or consent. . . . The bill passed the Senate unanimously, but was delayed in the lower house until the time for action (during



the present year) had passed. I still hope it will pass during the present session of Congress, and the just and humane objects contemplated be carried out during the summer of 1851. (Def. Ex. 4: S. Exec. Doc. No. 1, 31st Cong., 2d Sess. 47-48 (1850).)

27. On February 27, 1851, the Congress appropriated \$100,000 "[f]or expenses of holding treaties with the wild tribes of the prairies and for bringing delegates on to the seat of government." Act of February 27, 1851, 9 Stat. 570, 572.

28. On May 26, 1851, Luke Lea, Commissioner of Indian Affairs, wrote to Superintendent Mitchell informing him that he and Agent Fitzpatrick had been appointed by the President as commissioners to negotiate treaties "with the Indian tribes of the prairies." The general objectives of the negotiations as expressed in the letter of Instructions were: (1) to inform the various tribes of their proper relationship with the Government of the United States and its citizens; (2) to prevent the commission of future depredations upon the travelers over "the inland routes . . . to Oregon, California, Utah, and New Mexico," by fulfilling the promises to provide compensation for "the unrestricted right of way through the country and for the other advantages enjoyed and the injuries committed by the emigrants;" (3) to induce the Indians to undertake a transition to an agricultural existence so as to avoid the critical situation that would arise when the buffalo vanished from the plains; and (4) to establish fixed boundaries for the territories claimed by each tribe. (IV Kappler 1074-1075).

29. In his report of November 24, 1851, Agent Fitzpatrick describes his trip up the Arkansas River in the spring of 1851 for the purpose of inviting various tribes to the council at Fort Laramie. A meeting was held with the Comanches, Kiowas, Apaches, Arrapahoes, and Cheyennes. The Comanches, Kiowas and Apaches refused to attend the council because of their mistrust of the Crows and the Sioux, but the Cheyennes and the Arrapahoes agreed to travel to Fort Laramie.

30. On September 21, 1851, John H. Holeman, agent for the Utah Agency, reported that he had conducted a delegation of Shoshones to the treaty ground at Fort Laramie, but that Superintendent Mitchell had construed his instructions as to exclude this tribe from the treaty.

31. On November 11, 1851, Superintendent Mitchell forwarded the Laramie Treaty to Commissioner Lea. In his report he stated:

I have the honor herewith to transmit a treaty concluded at Fort Laramie, between myself and Agent Fitzpatrick, Commissioners on the part of the United States, and the following tribes or nations of the Prairie and Mountain Indians, viz: Sioux or Dahcotahs, Assiniboines, Arickeras, Gros Ventres, Crows, Cheyennes, and Arrapahoes.

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The most important provisions in the accompanying treaty I consider to be the following: 1. The right acknowledged and granted, on the part of the Indians, to the United States, to establish roads, military and other posts throughout the Indian country, so far as they claim to exercise ownership over it. 2. The solemn obligations they have entered into to maintain peaceful relations among themselves, and to abstain from all depredations upon the whites passing through the country, and to make restitution for any damages or loss that a white man shall sustain by the acts of their people. 3. The settling up of all former complaints on the part of the Indians for the destruction of their buffalo, timber, grass &c., caused by the passing of the whites through their country; the presents received at the time were considered as full payment. 4. The

promised annuity of \$50,000 for fifty years, to be delivered in such articles as their changing conditions may from time to time require. As this is the only article in the treaty that will cost money to the government, I will briefly state the reasons by which I was influenced, and the good results which I believe it will ultimately produce. . . . On the score of economy, to say nothing of justice or humanity, I believe that amount would be well expended. In the opinion of the best informed persons, (who had an opportunity of judging) it will, in all probability, save the country from ruinous and useless expense of a war against the prairie tribes, which would cost many millions, and be productive of nothing but increased feelings of hostility on the part of the Indians and annoyance and vexation to the government. The lessons of experience taught us during the Florida war, and which are now being taught us by the Indian wars in New Mexico, all admonish us of the necessity of avoiding Indian wars if possible. . . . (Sioux Ex. 145: H. R. Exec. Doc. No. 2, 32d Cong., 1st Sess. 288-290 (1851).)

32. Harry H. Anderson, expert witness for the Sioux plaintiffs in Docket No. 74, in his report stated that

the Yanktonals were not invited to the Fort Laramie proceedings. The 1851 Treaty was between the United States and "the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River" (2 Kappler 594). The Yanktonals were omitted because their country was between the headwaters of the Minnesota River in eastern South Dakota and the Missouri--an area far removed from the overland route to the Pacific coast which the treaty aimed to safeguard. (Sioux Ex. 533, p. 43).

33. Edwin T. Denig lived for twenty-three years among the Indian tribes on the Upper Missouri River. In 1855 he made the following observations with respect to the lands frequented by various Sioux bands:

The Tete Coupees, Gens des Perches and Gens des Pins all come under the head of Yanktonals. In 1833 the whole of those 400 lodges were governed by the great chief, Wah na tah, but after his death in 1840 became

separated into three distinct bands each having its own ruler. The whole of them, however, rove and hunt on the east side of the Missouri and very rarely are found on or beyond its western shores. (Sioux Ex. 61: E. Denig, Five Indian Tribes of the Upper Missouri 30 (Norman, University of Oklahoma Press).)

The Lower Yanktons or Yanktons as they are called to distinguish them from the YANCTONNAIS reside in that part of the territory on the east of the Missouri lying between the Vermillion and Fort Pierre, sometimes placing their camps on the head and along the Riviere aux Jacques if game is to be had, but oftener situated on the west side of the Missouri between L'eau qui Court and White River, occupying at times different places along these rivers some distance up. (Sioux Ex. 61: E. Denig, Five Indian Tribes of the Upper Missouri 36 (Norman, University of Oklahoma Press).)

Denig described territories for the seven Teton bands; all being found south or west of the Missouri.

Brigadier General William S. Harney led a military expedition against the Sioux in 1855. As part of his report to the Secretary of War he described the territory of the various bands. He mentioned four separate bands of Yanktonal all occupying territory east of the Missouri River.

Lieutenant G. K. Warren, of the United States Topographical Engineers Corps, explored the territory between the Missouri and Platte Rivers, and in his 1856 report gave the following description of the territory of the Sioux bands:

Hanktonwans, (Yanktons,) "Village at the End." These are sometimes called Wichiyela, meaning "First Nation." They are found at the mouth of the Big Sioux and between it and the Missouri River, as high up as Fort Lookout, and on the opposite bank of the Missouri. . . .

Hanktonwannas, (Yanktonnas,) meaning one of the "End Village" bands. They range between James River and the Missouri, as high north as Devil's Lake. . . .

The Tetonians, "Village of the Prairie," are supposed to constitute more than one-half of the whole Dakota nation. They live on the western side of the Missouri. . . . (Yankton Ex. 118: G. Warren, Preliminary Report of Explorations in Nebraska and Dakota 47, Washington, Government Printing Office (1875).)

34. The "Sioux or Dahcota Nation" with which the United States negotiated at Fort Laramie and in which title was recognized by the Treaty of September 17, 1851, included the Teton and Yankton divisions of Sioux. Neither the Yanktonal division, nor any of the four Eastern divisions were included in the term "Sioux or Dahcota Nation."

35. On September 20, 1853, Agent Alfred D. Vaughn of the Upper Missouri Agency reported the following population of Sioux bands:

Brule (lower)	150 Lodges
Yankton	375 Lodges
Two Kettle	165 Lodges
Blackfeet Sioux	150 Lodges
Hunkpapa	280 Lodges
San Arcs	160 Lodges
Minneconjou	225 Lodges

On September 22, 1856, Agent Thomas S. Twiss, of the Upper Platte Agency reported the Sioux population as follows:

Oglala	450 Lodges
Brule (Upper)	250 Lodges

These reports combined give a total population of 2,205 Lodges for the Yankton and seven Teton bands. The Yanktons amounted to 17.0% of the combined total.

In his report to the Secretary of War, dated November 10, 1855, Brigadier General William S. Harney reported the population of the Sioux bands as follows:

Yankton	375 Lodges
Brule	260 Lodges
Minneconjous	385 Lodges

Sans Arcs	150 Lodges
Unkpapas	380 Lodges
Blackfeet Sioux	160 Lodges
Two Kettles	60 Lodges
Oglalas	350 Lodges


The total population for the Yankton and seven Teton bands was 2,100 lodges. The Yankton amounted to 17.9% of the Sioux listed in Harney's report.

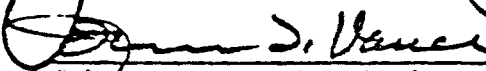
In his 1856 report of his explorations, Lieutenant G. K. Warren gave these populations estimates:


Yanktons	360 Lodges
Unkpapas	365 Lodges
Blackfeet Sioux	165 Lodges
Two Kettle	100 Lodges
Brule	380 Lodges
Oglalas	460 Lodges
Minneconjous	200 Lodges
Sans Arc	170 Lodges

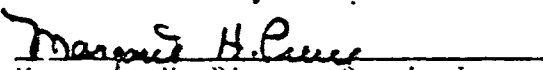
The total population for the Yankton and seven Teton bands was 2,220 lodges. The Yankton amounted to 16.4% of the Sioux listed.

These estimates combined indicate that the Yankton constituted 17% of the "Sioux or Dakcota Nation" at the effective date of the Treaty of Fort Laramie.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner