

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: December 14, 1970

Appearances:

Angelo A. Iadarola and Frances L. Horn, Attorneys for Plaintiff. John W. Cragun, Wilkinson, Cragun and Barker were on the briefs.

Arthur Lazarus, Jr., Attorney for Intervenors. William Howard Payne and Marvin J. Sonosky were on the briefs.

Craig A. Decker, with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

This is a claim brought under clauses 3 and 5 of Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) with regard to lands east of the Missouri River in South Dakota, which lands conform, with slight modification, to Royce Area 410. The Yankton Sioux Tribe,

1/ In Yankton Sioux Tribe v. United States, 22 Ind. Cl. Comm. 344 (1969), the Commission decided that the boundary of the lands ceded

plaintiff, has claimed that by the Treaty of April 19, 1858, 11 Stat. 742, 2 Kapp. 776, it received recognized title to the lands described in Article 2 of that Treaty. Alternatively, plaintiff has claimed that it held these lands by aboriginal Indian title. Intervenors have claimed that they own an undivided interest in the lands described in Article 2 of the Treaty. On December 17, 1969, this Commission decided that the plaintiff did not have recognized title to the subject lands, and granted intervenors leave to intervene to assert their claim to the subject lands. Yankton Sioux Tribe of Indians v. United States, 22 Ind. Cl. Comm. 344(1969). For the reasons indicated below, we now decide that plaintiff had aboriginal Indian title to the lands described in our Finding 14, and that intervenors had no interest in those lands or any other lands claimed by the plaintiff in its amended petition.

To establish aboriginal Indian title to an area, a tribal claimant must prove exclusive use and occupancy of the land "for a long time" preceding the date the land was ceded to the United States. We have examined the evidence relating to Yankton use and occupancy of the subject lands in our findings of fact. The journals, reports and maps of Lewis and Clark indicate that by 1805 the Yanktons used and occupied the eastern portion of the subject lands and were moving continually westward. The official report of the Atkinson-O'Fallon expedition

by the Yanktons in the Treaty of April 19, 1858, should follow the north branch of East Medicine Knoll Creek, rather than the south branch as mapped by Royce. In this opinion the entire cession as determined by the Commission will be referred to as Royce Area 410.

shows that the Yanktons hunted over the entire subject lands south and east of the Big Bend of the Missouri no later than 1825, and that the Teton Bands had ceased use of the subject lands by that date. Accounts by traders, Indian agents, army officers, and other travelers to the area indicate that Yankton use and occupancy of this area, with one exception to be discussed below, continued until the Yanktons moved onto the reservation created for them by the Treaty of April 19, 1858.

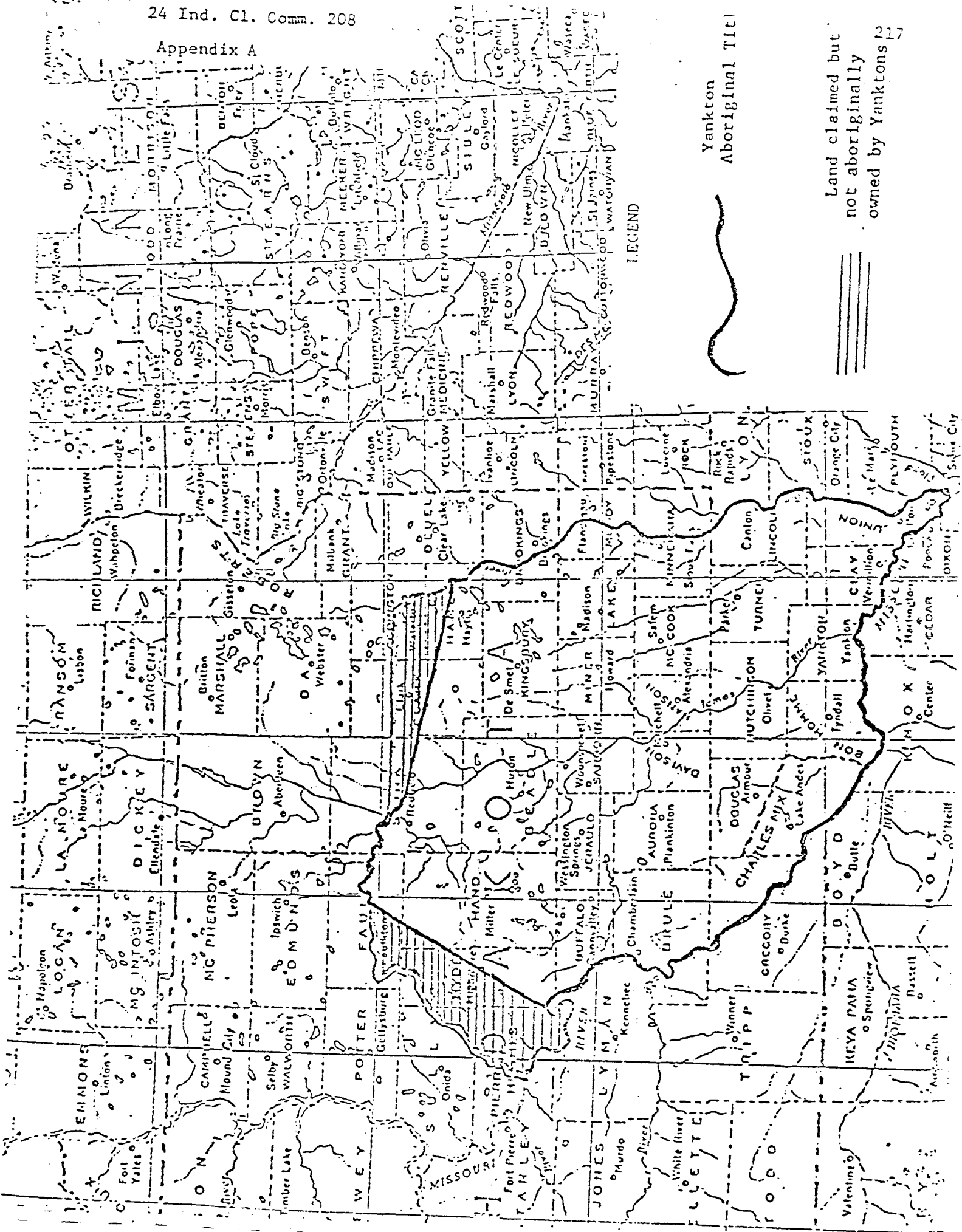
The Commission has been unable to find Yankton title to segments of land located in the northwestern and northeastern corners of Royce Area 410. The former is excluded from the title area because plaintiff has failed to produce any evidence which establishes Yankton occupancy of land above the Big Bend of the Missouri prior to 1853.^{2/} This, of course, was too late for Yankton title to ripen prior to the cession date in February 1859. The latter is excluded because Yankton use of the area was not exclusive. In Finding 11 we have found that the Five

2/ The earliest indication that the Yanktons ranged above the Big Bend of the Missouri was the 1853 annual report of Indian agent Alfred Vaughn. Vaughn reported that the territory of the Yanktons extended to Fort Pierre.

The only other evidence presented by plaintiff to establish its title to this area is set out in its Proposed Finding No. 9. This was evidence gathered by plaintiff's experts Dr. James H. Howard and Miss Ella Deloria from Yankton informants and is based on tribal traditions. These witnesses compared the information they gathered with similar information noted by explorer Joseph Nicollet. This evidence is insufficient to establish Yankton title to the area. Interpreting this evidence in a light most favorable to plaintiff, it indicates only that at some unascertained time the Yanktons may have used the areas indicated. This falls short of the exclusive use and occupancy for a long time, necessary to establishing aboriginal title.

For example, on page 181 of the transcript of the hearings in this claim, Dr. Howard testified that a small stream east of Pierre, South Dakota, was called "Wozhapi Owaste" by the informants, and is on some maps labeled "Mush Creek". According to Dr. Howard, the Yankton name "Wozhapi Owaste" refers to the fact that the water from the creek was especially suited to making a type of berry pudding or mush. Dr. Howard's testimony does not indicate that the Yankton used this Mush Creek prior to the date of cession, or that they used it for a long time, or that they used it to the exclusion of other Indians. Another example is on pages 183 and 184 of the transcript. Dr. Howard testified that the present Chapelle Creek was known in the Dakota language as "Owawicaseca" which means that it was a place rich in meat. Dr. Howard stated that the name derived from the fact that the Yanktons had conducted a successful hunt in the area. Again, Dr. Howard's testimony does not establish that the Yanktons used this area to the exclusion of other tribes for a long time prior to the cession.

Appendix A



LEGEND

Yankton
Aboriginal Title



Land claimed but
not aboriginally
owned by Yanktons

