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[1/], to Royce Area 410. The Yankton Sioux Tribe,

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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, plaintifff 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

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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

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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.

Lodge Band of Sisseton Sioux had a permanent village in northwest Deuel County, and hunted between that village and the James River. Such continued use by another Indian entity precludes Yankton title to that area.

The defendant concedes Yankton title to the central area of Royce Area 410. However, the defendant contends that usage by other Indian entities deprives the Yanktons of title to large areas of land in the western, northern, eastern and southeastern segments of Royce Area 410. The defendant claims that the western portion of the subject lands was used extensively by the Teton Sioux. This assertion is not supported by the evidence. Our findings indicate that the Tetons abandoned all usage of Royce Area 410 no later than 1825. Whatever use of the land the Tetons made prior to that time would not defeat Yankton title to the area. The defendant also claims that the Yanktonais Sioux used the northern portion of the subject lands, as far south as Huron, South Dakota. This claim is also without merit. No evidence has been presented to this Commission which shows any permanent use of any portion of Royce Area 410 by the Yanktonais. The defendant further claims that the Sisseton Sioux and Wahpeton Sioux used the eastern portion of Royce 410. However, except for the usage by the Five Lodge Band, already discussed above, the evidence indicates that the territory of the Sissetons, Wahpetons and other Minnesota Sioux Tribes extended only as far west as the Big Sioux River. Finally, the defendant claims that the southeastern corner of Royce Area 410 was used by the "Santee" Sioux. The Commission finds that the so called "Santee" Band was in

fact an integral part of the Yankton Sioux Tribe, (Finding 7), and that therefore its occupancy of territory cannot be considered other than Yankton occupancy. Therefore, the defendant's contention with respect to the southeast corner of the subject land must also fail.

The Commission will next consider the contentions of the intervenors. The intervenors concede that they have no claim based on Teton or Yanktonais aboriginal title to the subject lands. (Brief of Intervenors, p. 10). Furthermore, the Commission has examined the evidence, including the evidence in Dockets 74 and 74-B made a part of the record in this docket by our order of January 28, 1970, and has found, and we so hold, that neither the Yanktonais Sioux nor the Teton Sioux exclusively used or occupied any portion of the lands claimed by the plaintiff. The real claim of the intervenors is based on the contention that the Yankton, Yanktonais, and Teton Sioux were parts of a larger land-owning entity--the "Missouri Sioux" or "Sioux Nation"-- and that therefore the Yanktonais and Teton Tribes held an undivided interest in the lands of the Yankton Sioux.

To understand the intervenors' argument, it is necessary to review some of the history of both Docket 74 and Docket 332-C. On August 27, 1965, the Commission decided that the Treaty of Fort Laramie of September 17, 1851, (11 Stat. 794, 2 Kapp. 594), recognized title to the so-called Sioux-Laramie land "in the 'Sioux or Dahcotah Nation' as that name was used in the treaty." <u>Sioux Tribe</u> v. <u>United States</u>, 15 Ind. Cl. Comm. 577, 601 (1965). At that time the Commission postponed to a later decision the question of which Sioux tribes were

included in the "Sioux or Dahcotah Nation". On December 5, 1966, plaintiff filed a motion to consolidate Dockets 74 and 332-C (then designated 332-A) for the purpose of determining the identity of the Sioux parties to the Fort Laramie Treaty. The Commission ordered the dockets consolidated on January 17, 1967, for the sole purpose of determining the Sioux parties to the Fort Laramie Treaty and their respective interests in the Sioux-Laramie land. In that consolidated proceeding, plaintiff argued that the Yanktons and Tetons were party to the Treaty of Fort Laramie and that therefore plaintiff had a compensable interest in the Sioux-Laramie lands. At the same time plaintiff adhered to its contention that it alone had a claim to Royce Area 410. Intervenors, on the other hand argued that the Yanktonais, as well as the Yanktons and Tetons were the Sioux parties to the Fort Laramie Treaty. They further contended that the Sioux-Laramie land must be considered in context with all land held by the Missouri Sioux tribes in 1851, and that since Royce Area 410 amounted to more than the Yanktons' proportionate share of all Sioux land, (based on respective populations of the tribes in 1851) the plaintiff should be precluded from sharing in the Sioux-Laramie land. The final brief in the consolidated dockets was filed by plaintiff January 5, 1968. On November 19, 1968, and while decision was still pending in the consolidated dockets, intervenors filed their motion to intervene in Docket 332-C. Both plaintiff and defendant opposed this motion, which the Commission granted in our decision of December 17, 1969.

In simple terms, the contention of intervenors, in what they

considered to be companion cases, is that the Sioux land-owning pattern must be identical on both sides of the Missouri, that is, if the land-owning entity in the Sioux-Laramie lands is the Sioux Nation, then the land-owning entity in Royce Area 410 must also be the Sioux Nation. Alternatively they argue that if the land-owning entity in Royce Area 410 is the individual tribe then the land-owning entity in the Sioux-Laramie land must also be the individual tribe--the Tetons. Neither of these contentions has any merit. They both fail to recognize the legal distinction between aboriginal Indian title and recognized title. Aboriginal title is based upon the exclusive use and occupancy of an area of territory by a land-owning Indian entity. Determination of whether a claimant has such title is a question of fact which depends on historical evidence of actual occupation of the territory by the claimant. On the other hand, recognized title is based upon a grant of land to a named Indian entity by the Congress of the United States. Determination of whether a claimant has such title is a question of law which depends solely upon the intent of Congress. Such determination is in no way dependent upon the actual usage of the land by the Indians. Congress can, if it so chooses, recognize title in an Indian entity which has no historical nexus with the land in question. Congress can also recognize title in an entity composed of several Indian groups, although each of those groups may be a separate land-owning entity with respect to aboriginal title.

The claim of both plaintiff and intervenors to an interest in the Sioux-Laramie land is based upon recognized title. We have decided

that Congress granted recognized title in that land to the "Sioux or Dahcotah Nation". We have also decided that the "Sioux or Dahcotah Nation" in which Congress recognized title was the Teton Sioux and Yankton Sioux Tribes. Sioux Nation v. United States, 24 Ind. Cl. Comm. 147 (1970). In making such determination this Commission was faced with a question of law and looked solely to the intent of Congress to resolve that question.[3/] Land-owning patterns among the Missouri Sioux were irrelevant to that decision. In this docket, we have held that the Treaty of April 19, 1858, was not a treaty of recognition. Therefore, the claims of both plaintiff and intervenor must be based upon aboriginal Indian title. In determining title to Royce Area 410, this Commission is faced with a question of fact. We must look to the actual land holding patterns of the Sioux to resolve it. The intent of Congress expressed in the Treaty of Fort Laramie is totally irrelevant to a determination of aboriginal title to Royce Area 410. The land owning entity with respect to the Sioux-Laramie lands was determined by Congress. We have decided that the Yankton Sioux Tribe was part of that entity. The land owning entity with respect to the subject lands was determined by Sioux land holding patterns. We have decided that the Yankton Sioux Tribe was that entity.

We therefore hold that the Yankton Sioux, by reason of exclusive

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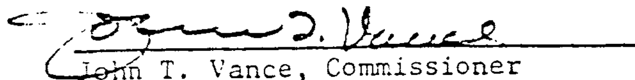
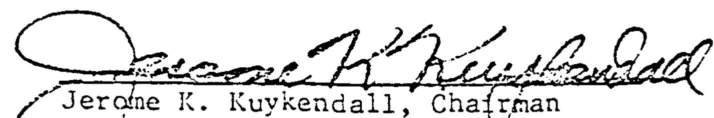
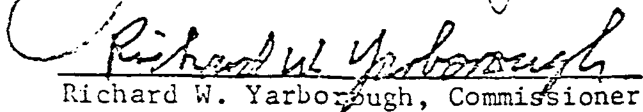
3/ In ascertaining the intent of Congress, of course, the Commission made certain findings of fact.

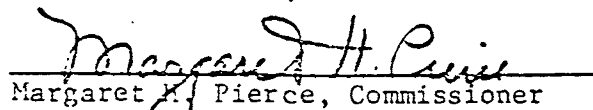
use and occupancy for a long time prior to 1859, had aboriginal title to the lands described in Finding 14.


John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner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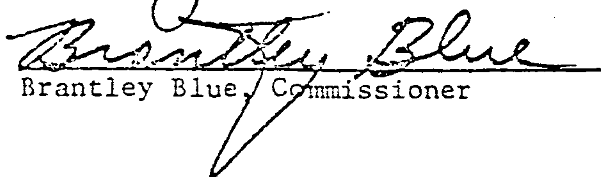
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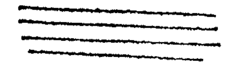
Yankton Aboriginal Titl



Land claimed but not aboriginally owned by Yanktons