

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: January 6, 1971

Appearances:

Arthur Lazarus, Jr., William Howard Payne, and Marvin J. Sonosky, Attorneys for Plaintiffs in Docket No. 74.

Angelo A. Iadarola, Attorney for Plaintiff in Docket No. 332-C. Frances L. Horn, Wilkinson, Cragun and Barker were on the brief.

Craig A. Decker, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION ON MOTIONS FOR REHEARING AND MODIFICATION 1/

Commissioner Vance delivered the opinion of the Commission.

The Commission now has before it two motions arising out of its Opinion, Findings of Fact and Order entered in consolidated Docket

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1/ In this opinion, the Commission will sometimes refer to the plaintiffs in Docket 74 as the Sioux plaintiffs, or simply as the Sioux. The Commission will sometimes refer to the plaintiff in Docket 332-C as the Yankton plaintiff, or as the Yanktons.

Nos. 74, 221-A, 350-B, and 350-C, on August 26, 1970 (23 Ind. Cl. Comm. 419). In that decision, the Commission found that the Teton and Yanktonais Sioux, ancestors of the plaintiffs in Docket No. 74, had aboriginal title to a tract of land in North Dakota and South Dakota, east of the Missouri River. Specifically, as relevant to the present dispute, we found that the southwestern boundary of the Sioux aboriginal land was as follows:

(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;

The two motions, both made by the plaintiffs in Docket No. 74, ask that the Commission amend the above descriptions to include within the Sioux aboriginal lands approximately 250,000 acres which are presently excluded. Because these motions presented a possible conflict between Docket No. 74 and Docket No. 332-C, the Commission, by order entered November 4, 1970, consolidated these dockets for the limited purpose of resolving the issue presented in the motions. For the reasons set out below, the Commission must deny both motions.

A partial review of the history of the two dockets herein consolidated is necessary to a proper understanding of the dispute represented by the two motions. In Docket No. 332-C, plaintiff Yankton Sioux

claimed in the alternative, recognized title or aboriginal title to the lands described in Article 2 of the Treaty of April 19, 1858 (11 Stat. 743). These lands have been designated as Area 410 by Charles C. Royce on his North and South Dakota Map in the 18th Annual Report of the Bureau of American Ethnology (Part II). With respect to the current dispute, that treaty described the northwestern boundary of the lands being ceded by the Yankton Sioux to the United States as follows:

. . . thence up the Missouri River to the mouth of the Pa-hah-wa-kan or East Medicine Knoll River; thence up said river to its head; thence in a direction to the head of the main fork of the Wan-dush-kah-for or Snake River; thence down said river to its junction with the Tchan-san-san or Jacques or James River; . . .

In its brief in Docket 332-C, Yankton plaintiff also alleged that Royce, in mapping the Yankton cession, had mistakenly followed the south fork rather than the north fork of "East Medicine Knoll River."<sup>2/</sup> Defendant opposed this allegation, insisting that Royce had been correct. By decision dated December 17, 1969, the Commission ruled that the Yankton Sioux did not have recognized title to the cession area (22 Ind. Cl. Comm. 344). In the same opinion, the Commission, having thoroughly analyzed the evidence presented by plaintiff and

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<sup>2/</sup> Medicine (Knoll) Creek, or East Medicine Knoll River as it was known in 1858, forks in the vicinity of the present town of Blunt, South Dakota. One branch of the stream (the south fork) flows from the east with its source being southeast of Highmore, South Dakota. The other branch (the north fork) flows from the northeast with its source being near the northern border of Hyde County, South Dakota. In interpreting the 1858 Treaty, Royce followed the south fork of the stream to its source and then drew a straight line north-northwesterly to the source of south Snake Creek.

defendant, ruled that the north fork of "East Medicine Knoll River" was the proper boundary of the Yankton cession, Royce Area 410.

In Docket 74, plaintiffs, among other things, claimed aboriginal title to a large segment of territory east of the Missouri River and north of Royce Area 410. In that claim, Sioux plaintiffs presented evidence relating to Teton and Yanktonais use and occupancy. After analyzing that evidence, and the contrary evidence presented by the defendant, the Commission found that the Teton and Yanktonais Sioux had aboriginal title to almost the entire tract of land that the plaintiffs had claimed. However, as shown by calls (9) and (10) above, the Commission drew the boundary in the southwestern corner of the area along North Medicine Creek, rather than along South Medicine Creek as plaintiffs had contended. It thus results that the Commission found the southwestern border of the Sioux aboriginal lands to be identical with the northwestern border it had earlier found for the Yankton cession under the 1858 Treaty.

In the first of its motions, designated a motion for rehearing, Docket 74 plaintiffs request the Commission to modify its August 26, 1970, decision so as to extend Teton and Yanktonais aboriginal title south to South Medicine Creek. In support of this motion, plaintiffs contend that the Commission erred when it determined, in Docket 332-C, that the proper boundary for Royce Area 410 was North Medicine Creek. Sioux plaintiffs argue that in making such determination the Commission misinterpreted the evidence presented in

Docket 332-C. Plaintiffs also allege that an exhibit purporting to be the so-called "Mix Map" which accompanied the 1858 Treaty, was in fact not the genuine Mix Map, and that therefore the Commission ought not to have relied upon it. As part of their motion, the Sioux plaintiffs also suggest that the Commission set a hearing so that they can offer further evidence to prove that the proper boundary of Royce Area 410 was South Medicine Creek.

In the second motion, designated a motion to receive exhibits in evidence and for other relief, and which is supplementary to the first motion, Sioux plaintiffs again urge the Commission to modify its August 26, 1970, decision. In support of this motion, Docket 74 plaintiffs offered in evidence a map which they claim is the true 1858 Mix Map, along with other exhibits tending to establish its authenticity.<sup>3/</sup> Sioux plaintiffs contend that this map establishes conclusively that South Medicine Creek was the intended boundary of the 1858 Yankton cession. They further contend that this map also establishes that the head of the main fork of Snake Creek was further east in 1858, and that therefore the Yankton cession was even smaller than as mapped by Royce. Both of Sioux plaintiffs' motions appear to be based upon the assumption that were the Commission to modify its findings in Docket 332-C so as to establish the borders of Royce Area 410 in the manner

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<sup>3/</sup> The map and supporting exhibits were admitted into evidence by order dated November 4, 1970.

they urge, such a modification would automatically place the land thus excluded from the Yankton cession within the area of Teton and Yanktonais Sioux aboriginal title.

After the consolidation of these dockets, Yankton plaintiff filed its objections to the two motions. It argues that the Commission's decision of December 17, 1969, was fully supported by the evidence and that Sioux plaintiffs' newly discovered Mix Map acts to support rather than to weaken the Commission's ruling.

It thus appears to the Commission that the dispute between the parties is a factual one. Sioux plaintiffs examine the various maps and documents which are in evidence and conclude that the true border of Royce Area 410 should follow South Medicine Creek to its source and then should head northeasterly to a point where the head of the main fork of Snake Creek purportedly was in 1858. Yankton plaintiff, on the other hand, examines the same maps and documents and concludes that the border of Royce Area 410 is as interpreted by the Commission--following North Medicine Creek to its head and then continuing to the source of South Snake Creek. The Commission, however, finds it unnecessary to resolve this factual dispute. We must deny Sioux plaintiffs' motions regardless of the boundaries of Royce Area 410.

The claim in Docket 74 was that the Teton and Yanktonais Sioux had aboriginal title to certain lands east of the Missouri River at the time of the Treaty of April 29, 1868 (15 Stat. 635). In order to establish their claim, Sioux plaintiffs had to prove that their

forebears exclusively used and occupied the claimed territory for a long time prior to the date it was ceded to the United States. To meet this burden of proof, Sioux plaintiffs introduced into evidence more than 500 exhibits, all relating to the extent of land actually used and occupied by the Sioux, and to the manner in which the land was used. Defendant, on the other hand, introduced into evidence other exhibits tending to show either that the Sioux did not use or occupy the claimed land, or that other Indian entities used the land, thus making Sioux occupancy non-exclusive. In deciding the aboriginal claim in Docket 74, the Commission examined all of this evidence and made its conclusion as to the lands to which the Sioux had aboriginal title in 1868. Our findings as to the boundaries of these lands are set out in Finding of Fact 14 (23 Ind. Cl. Comm. at 438). In making that decision the Commission did not examine any evidence relating to the Yankton Sioux cession effectuated by the Treaty of 1858, because that treaty was irrelevant to the issue of Teton and Yanktonais Sioux use and occupancy. When we drew the boundaries of the Sioux aboriginal lands, we did not consider ourselves to be bound by our prior determination, in Docket 332-C, as to the proper boundaries of the Yankton cession. To have done so would have been clearly erroneous. Had the Sioux plaintiffs been able to prove that the area of their exclusive use and occupancy extended south of North Medicine Creek, this Commission would have found that they had aboriginal title to that area. However, Sioux plaintiffs did not establish that they had title


to any portion of Royce Area 410 as defined by the Commission. In short, the location of the cession boundary in a treaty between the United States and the Yankton Sioux had no effect upon this Commission's decision in Docket 74. We would have reached the same result in Docket 74, even if we had decided in Docket 332-C that the true boundary of Royce Area 410 was South Medicine Creek. Furthermore, had we determined, in our decision of December 17, 1969, that the head of Snake Creek in 1858 was east of its present location, such determination would not have affected our decision in Docket 74.

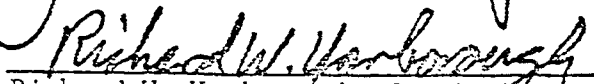
The deficiency in the motions of Sioux plaintiffs is that, although they request the Commission to modify its decision of August 26, 1970, establishing the aboriginal title of the Teton and Yanktonais Sioux, they proffer no new evidence of Teton and Yanktonais use and occupancy of the additional area they claim. Rather, they rely upon evidence and arguments that could at most cause us to modify our decision of December 17, 1969, in Docket 332-C. As we have already indicated, such a modification would not affect our decision in Docket 74. Sioux plaintiffs' assumption, that a change in the borders of the Yankton cession would automatically enlarge the area of Teton and Yanktonais aboriginal title, is unwarranted. Even if this Commission, after re-examining all of the evidence relating to the 1858 locations of the main branch of East Medicine Knoll River and of the head of Snake Creek, were to change its conclusion as to the boundaries of Royce Area 410, Sioux plaintiffs would still not have proven that they had


aboriginal title to the tract of land that would thus be excluded from the Yankton cession. Because the plaintiffs in Docket 74 have proffered no new evidence of use and occupancy which would establish their aboriginal title to any lands south of the line established by calls (8), (9), and (10), of Finding 14 entered by this Commission on August 26, 1970, (23 Ind. Cl. Comm. at 438) it follows that their motions must be denied.


  
John T. Vance, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner