

BEFORE THE INDIAN CLAIMS COMMISSION

THE THREE AFFILIATED TRIBES OF THE	)	Docket Nos. 350-B
FORT BERTHOLD RESERVATION,	)	and 350-C
	)	
TURTLE MOUNTAIN BAND OF CHIPPEWA	)	Docket No. 113
INDIANS,	)	
	)	
RED LAKE BAND AND PETER GRAVES, ET AL.,	)	
EX. REL., RED LAKE BAND,	)	
PEMBINA BAND AND KATHERINE CARL BARRETT,	)	
ET AL., EX. REL., PEMBINA BAND,	)	Docket No. 246
JOHN B. AZURE, ET AL., EX. REL.,	)	
CHIEF LITTLE SHELL'S BAND OF PEMBINA	)	
CHIPPEWA INDIANS,	)	
	)	
THE LITTLE SHELL BAND OF CHIPPEWA INDIANS,	)	
AND JOSEPH H. DUSSOME, ET AL., EX. REL.,	)	Docket No. 191
SAID BAND,	)	
	)	
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S	)	
RESERVATION, MONTANA, AND JOE CORCORAN,	)	
EX. REL., CHIPPEWA CREE TRIBE OF THE	)	
ROCKY BOY'S RESERVATION,	)	Docket No. 221
BLANCHE PATENAUDE, ET AL., EX. REL.,	)	
LITTLE SHELL BAND OF INDIANS AND THE	)	
CHIPPEWA CREE TRIBE,	)	
	)	
THE SIOUX NATION, ET AL.,	)	Docket No. 74
	)	
THE CHIPPEWA CREE TRIBE OF ROCKY BOY'S	)	Docket No. 221-A
RESERVATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	

Decided: March 30, 1971

FINDINGS OF FACT

1. The Three Affiliated Tribes of the Fort Berthold Reservation is an identifiable group of American Indians entitled to maintain this action under Section 2 of the Indian Claims Commission Act. The plaintiff is a corporate entity organized under the provisions of the Wheeler-Howard Act of 1934 (48 Stat. 484), and its tribal organization is recognized by the Secretary of the Interior as having the exclusive right to represent the plaintiff.

The plaintiff corporation is the successor in interest to three Indian tribes, the Arikara, the Mandan, and the Hidatsa. Each of these tribes has also been known by many other names. The Arikara have been known, inter alia, as the Rees, Ricara, Caracara, Aricari, Pani, and Ricarees. The Mandan, or village groups within that tribe, have been referred to as Nuptadi, Montonnes, Nuitadi, Numakati, Mantanes, and Manton. The Hidatsa are most familiarly known as the Gros Ventres, but they, or village groups within the tribe, have also been called Minitari, Wandering Minitari, Fall Indians, Metaharta, Amahami, Awaxawi, and Awatixa.

2. In Docket 350-C, the plaintiff seeks compensation from the defendant for the taking, without payment, of approximately 13,000,000 acres of land lying to the north and east of the Missouri River in the present states of North Dakota and Montana. The plaintiff claims the three tribes had aboriginal or Indian title to these lands, the approximate boundaries of which are as follows:

Beginning at the mouth of the Cannonball River; thence up the Missouri River to the mouth of Big Muddy Creek; thence up Big Muddy Creek to the boundary line between the United States and Canada, thence east to the point where said boundary line intersects the Mouse River; thence along the Mouse River in the United States to the point where said Mouse River turns north; thence to Devil's Lake; thence around and including Devil's Lake; thence to the place of beginning.

In Docket 350-B, the plaintiff claims that on and prior to July 27, 1866, the three tribes owned or occupied the following lands in the present state of North Dakota:

Beginning on the Missouri River at the mouth of Snake River, about thirty miles below Ft. Berthold; thence up Snake River and in a northeast direction twenty-five miles; thence southwardly parallel to the Missouri River to a point opposite and twenty-five miles east of old Ft. Clarke; thence west to a point on the Missouri River opposite to old Ft. Clarke; thence up the Missouri River to the place of beginning.

The above tract lies wholly within the outer boundaries of the area claimed in Docket 350-C and is estimated to contain in excess of 200,000 acres.

The plaintiff claims that the defendant was not fair and honorable in its dealings with the three tribes when it failed to ratify an agreement entered into on July 27, 1866 (II Kappler 1052), whereby the three tribes agreed to cede the above lands to the United States, and that in violation of their right of ownership or occupancy of this tract, the defendant has taken and disposed of a large part of these lands without the payment of compensation.

Because of the numerous Indian tribes and bands claiming either aboriginal ownership of or recognized title to much of the same area in North Dakota, claims filed by Chippewa and Sioux Indians in Dockets 113, 191, 221, 246, 74 and 221-A have been consolidated with Dockets 350-B and 350-C to the extent that they overlapped or were in conflict (Commission's Orders of September 9, 1960, and April 5, 1962). The Chippewa and Sioux cases on the issue of title have been separately heard and decided.

3. On September 17, 1851, the Arikara, Mandan, and Hidatsa Tribes, together with the Sioux of the Missouri River, the Assiniboines, Crows, Cheyennes, and Arapahoes, gathered at Fort Laramie and executed a treaty of peace with the United States (11 Stat. 749). The treaty was approved by the Senate on May 24, 1852, after certain amendments had been made, and, as modified, received the approval of the tribes involved. Under the provisions of Article 5 of the Fort Laramie Treaty, the territory of the Arikara, Mandan, and Hidatsa Tribes was defined as follows:

. . . commencing at the mouth of the Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to the mouth of Powder River in a southeasterly direction, to the head-waters of the little Missouri River; thence along the Black Hills to the head of Heart River; and thence down Heart River to the place of beginning.

All of the above area lies west and south of the Missouri River. However, the Fort Laramie Treaty specifically provided that the Indian nations involved did not "abandon any rights or claims they may have to other lands" (11 Stat. 749); the Three Affiliated Tribes, in Dockets 350-B and 350-C, now claim aboriginal title to lands north and east of the Missouri River.

4. Mandan, Hidatsa, and Arikara people have traditionally inhabited the northern plains region, archaeological evidence indicating that this period of occupation may have extended back over 1,000 years. The Arikara were long-time residents of the Missouri River Valley in South Dakota, while the Mandan occupied territory in the Missouri Valley to the north, in North Dakota. The Hidatsa were the northernmost of the three tribes, originally occupying territory far to the north and east of the Missouri River.

5. The first white man to have written of contact with any of the three tribes was Verendrye, a French trader from Canada, who visited the Mandans in 1738. His records, as well as other early historical accounts and archaeological evidence, indicate that the three tribes were populous, powerful, and possessed of a culture well-adapted to the northern plains.

They lived in large, strongly built and well-fortified villages with earth-covered houses which served as semi-permanent summer camps. In the winter, smaller groups within a village moved away in order to be nearer to wood and game, and for ceremonial rites such as eagle-trapping.

The principal source of food for the three tribes was the buffalo. Mandans had acquired the horse by at least 1742, thus enabling their hunters to extend the range of buffalo hunts. The three tribes were also successful agriculturalists, and, in their semi-permanent summer villages, they raised large quantities of Indian tobacco for trade, corn, beans, squash and sunflowers, for use when the buffalo were scarce.

Because of their central location in the northern plains, between the Rockies and the eastern woodlands, the semi-permanent villages of the Mandan, Hidatsa, and Arikara became the trading centers of the plains. These tribes had crops to sell, and they served as middlemen between the tribes to the west and those to the east.

6. By 1750, the Mandans were concentrated in at least six, and possibly as many as thirteen, villages within twenty miles of one another, on both banks of the Missouri in the vicinity of the Heart River in North Dakota. At that time, their population was estimated to be between 7,000 and 15,000. Farther upstream on the Missouri, near the Knife River, were three villages or bands of Hidatsas, with whom the Mandans maintained a close relationship. The Hidatsa Tribe then consisted of a loose association of closely related bands which ranged northward along the Missouri and lower Yellowstone, the Little Missouri, the Mouse or Souris River, the Turtle Mountains, and even as far east as the Devil's Lake region. Occasionally, the Hidatsa 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 to hunt 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 the epidemic, the Mandan population was estimated to be 1,500, while the Hidatsas numbered between 2,100 and 2,500. This severe reduction in population, together with increasing

hostility from neighboring tribes, particularly the Sioux, led to a further consolidation of Mandan and Hidatsa villages, so that by the end of the 18th century, virtually all of their semi-permanent summer villages were on or near the banks of the Missouri River in North Dakota.

7. In 1796, Jean Baptiste Truteau, a trader, gave detailed accounts of his travels in the Missouri Valley. He reported that the Mandan were situated in three villages in the vicinity of the Knife River, two on the east side of the Missouri and one on the west. He also found that the Hidatsas were living in two villages on the west bank of the Missouri about two leagues upstream from the Mandans.

Between 1797 and 1798, David Thompson found the Mandan and Hidatsa in five villages, at least three of which were on the east bank of the Missouri around the Turtle River near modern Washburn, North Dakota.

8. Prior to 1781, the Arikara occupied extensive villages on both sides of the Missouri River between the White River in South Dakota and the present day border between North and South Dakota. The Arikara population at that time was approximately 15,000. However, the smallpox epidemic which attacked the Mandan and Hidatsa Tribes, also greatly reduced the Arikara population. By the spring of 1795, Truteau found the Arikara concentrated in two villages near the Cheyenne River in South Dakota. Shortly thereafter, harrassed by their powerful Sioux enemies, the Arikara moved farther north on the Missouri in order to be nearer to the Mandan villages in North Dakota.

9. In 1799, the Arikara quarreled with the Mandan and moved downstream. By 1804, Lewis and Clark, the first American explorers on the Missouri River, reported that the Arikara were living in three villages above the mouth of the Grand River in present South Dakota, one of which was subsequently abandoned by 1811. The total population of the Arikara Tribe at this time was about 3,000.

While living near the Grand, which is south of the area claimed in Docket 350-C, 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, who was joined by a number of Sioux. The attack failed to penetrate the Arikara villages, and the Arikaras slipped out and scattered to other areas. They returned to the Grand River villages in 1824 where they remained until 1832. Maximilian, a German prince, passed the sites of the Grand River villages in his travels up the Missouri River in 1833, and commented that they had been completely abandoned for almost a year. He attributed the abandonment of these villages to drought, scarcity of game, fear of United States military reprisals, and pressure from the hostile Sioux.

After leaving the Grand River sites, one group of Arikaras went to the vicinity of Fort Clark, below the mouth of the Knife River; another group settled near the Platte River (far to the south of the area claimed); and others located around the Little Missouri and in the Black Hills where they led a nomadic life.



10. By 1804, the semi-permanent villages of the Mandans and Hidatsas were concentrated in the Knife River area. Lewis and Clark found these two tribes living in five villages along the Missouri, in the vicinity of the Knife, in the central portion of the area claimed. One of the Mandan villages was on the east side of the Missouri, which village, Lewis and Clark reported, was a consolidation of two or more villages located there in earlier times. The explorers estimated that the total Mandan and Hidatsa population was 3,950.

Alexander Henry visited the Mandan and Hidatsa in 1806 as a representative of the Northwest Fur Company. He found the three Hidatsa village groups occupying the same villages as in Lewis and Clark's time. However, the Mandan who had lived on the east bank had moved to the opposite bank where they had built a new village.

Concerning the reorganization of the Mandan villages after the smallpox epidemic of 1782, Henry wrote:

Not many years ago the Pawnees [Arikara] and Mandanes were allied to each other and lived in the same villages on the Missouri, about 30 leagues below this place. A misunderstanding happening, they separated; the Pawnees retired down the river and built their village where it now stands [the Grand River villages], and the Mandanes proceeded with an intention of settling themselves somewhere about the confluence of the Little Missouri, or on the upper part of Riviere la Souris. But on their arrival at this place [the Knife] the Big Bellies [Hidatsa] barred the road and put a stop to their westward progress, telling them they would not permit anyone to build higher up the river than themselves, and desiring the Mandanes to build where they are at present. (Pl. Ex. 47: 1 Manuscript Journals of Alexander Henry and of David Thompson 334 (E. Coues ed. 1897)).

Thus, although the Hidatsas welcomed the Mandans as close neighbors, they refused them permission to move above the mouth of the Knife River into an area which was claimed as exclusive Hidatsa hunting territory.

11. The interval between 1806 and 1825 was a time of comparatively little direct contact between the Mandan and Hidatsa Tribes and white explorers and traders. However, subsequent reports, as well as archaeological findings, indicate that during this period, the Mandans occupied villages far to the south of the Knife River. Atkinson and O'Fallon, in command of a military expedition up the Missouri River in 1825, reported seeing the remains of a village which had been deserted by the Mandans six years before. At that point they were above the mouth of the Cannonball River, just below the present town of Huff, North Dakota.

In 1833, Maximilian, also somewhat north of the mouth of the Cannonball, reported:

. . . We came to the site of the old Mandan village, which was situated, at the foot of the hills, in a fine meadow near the river; some poles, that were still standing were the only remains of it; there was no village here at the time of Lewis and Clarke's journey. (Pl. Ex. 64: 22 Early Western Travels 339 (R. Thwaites ed. 1906)).

At that point, Maximilian stated that his party was in the territory of the Mandan Tribe.

In addition, pottery which has been found in and around the present city of Mandan, at the mouth of the Heart River, is of a type which indicates Mandan reoccupation of old Heart River villages long after the

tribe had supposedly relocated permanently in the Knife River area to the north.

12. When Maximilian reached Fort Clark, an American Fur Company trading post on the west side of the Missouri near the Knife, he found two Mandan villages located within three miles of the post. Three Hidatsa villages were about fifteen miles upstream. The total population of the two tribes was estimated to be 3,700.

The Knife River villages remained fairly stable until 1837. In April of that year, the Arikara, who had scattered upon leaving their Grand River villages in 1832, returned to the banks of the Missouri, joining the Mandans and Hidatsas at Fort Clark, where they were given a friendly welcome by both tribes. Most of the Arikaras moved into Mandan villages, and a small number took residence with the Hidatsas. In July, a severe smallpox epidemic broke out. Chardon, a fur trader who was director of the post, presented a vivid picture of the course of the disease. He reported that, by the fall of 1837, one-half of the Arikaras and seven-eighths of the Mandans had died of the disease. The Hidatsa, who generally led a more nomadic existence, were again better able to survive the epidemic.

13. The reduction in population, along with pressure from hostile tribes, led to considerable movement and further reorganization among the three tribes.

In September 1837, the remnants of the Mandan, fearing the Arikaras would unite with the Sioux, moved to the opposite side of the Missouri

and in the spring of 1838, after wintering south of Fort Clark, the Arikaras returned and took possession of the larger Mandan village at Fort Clark. A few Mandans remained with the Arikara until June 1838, when, incensed by Arikara theft of their women, they moved upriver to join the Hidatsas. In July, however, the Hidatsas moved downriver to be near the Arikaras for mutual protection against the Sioux. In 1839, the Arikaras quarreled with the Hidatsas, and both the Hidatsas and the Mandans again moved upriver.

In 1845, under an agreement with the American Fur Company, a trading post was built at Fort Berthold, upstream from the Knife River on the Missouri. The Hidatsa and a group of Mandan migrated upstream and built Like-A-Fishhook Village on the east bank of the Missouri, opposite Fort Berthold. By 1862, the remaining Mandans had also settled there.

The Arikaras stayed around Fort Clark until 1861 when the trading post there was abandoned by the American Fur Company. The destruction of the post resulted in the culmination of the Arikaras' gradual and sporadic northward migration along the Missouri. In 1862, they moved north to Like-A-Fishhook Village, joining the Mandans and Hidatsas there.

After this consolidation in Like-A-Fishhook Village, there were no major tribal movements, and the village was the final tribal site until the Indians were dispersed onto individual allotments in 1883.

14. The Indians of the Mandan, Hidatsa, and Arikara Tribes were not nomadic like the Sioux, but lived in fortified villages which were usually centers for farming and trade. However, as testified to by

Dr. Edward Bruner, a witness for the plaintiff, they also relied heavily upon the buffalo for their subsistence and went on extensive hunting expeditions, ranging considerable distances from their villages. Dr. Bruner testified generally as to the extent of territory thus used and occupied by the three tribes over a period of more than 100 years. According to Dr. Bruner, the territory occupied by the three tribes at various times from 1750 to 1860 decreased in extent as their population grew smaller because of smallpox epidemics, drought, and hostilities of various tribes, especially the Sioux.

In addition, several explorers and traders have documented the extent of the territory thus used by these tribes, and Dr. Alfred Bowers, another witness for the plaintiff, testified as to the location of a number of camping and hunting sites in North Dakota.

15. In 1802, Charles Le Raye, a trader, met a party of Mandans hunting buffalo near the mouth of the Heart River. Continuing north on the Missouri, he reported passing a number of Mandan camps before arriving at the principal Mandan village.

In the vicinity of present day Washburn, North Dakota, Lewis and Clark came upon a grand chief and five lodges of Mandans, out on a hunting excursion. During their stay at Fort Mandan in the winter of 1804, the two explorers often gave detailed accounts of the hunting activities of the Mandans:

. . . Nearly one-half of the Mandan nation passed down the river to hunt for several days. In these excursions, men, women, and children, with their dogs,

all leave the village together, and after discovering a spot convenient for the game, fix their tents; all the family bear their part in the labor, and the game is equally divided among the families of the tribe. (Pl. Ex. 51: History of the Expedition under the Command of Lewis and Clark 224 (E. Coues ed. 1893)).

Near the mouth of Snake Creek, on the east side of the Missouri, Lewis and Clark passed "on the north a hunting-camp of Minnetarees. [Hidatsa], consisting of 30 lodges, built in the usual form of earth and timber." (Pl. Ex. 51: History of the Expedition under the Command of Lewis and Clark 261 (E. Coues ed. 1893)).

On their return trip down the Missouri in 1806, Lewis and Clark indicated that these tribes occupied territory far to the north and west of their villages. Near the mouth of the Little Missouri River, they reported:

. . . Some Indians were seen at a distance below in a skin canoe; these were probably some Minnetarees on their return from a hunting excursion, as we passed one of their camps on the southwest side, where they had left a canoe. Two other Indians were seen far off on one of the hills, and we shall therefore soon meet with our old acquaintances, the Mandans. (Pl. Ex. 51: History of the Expedition under the Command of Lewis and Clark 1176 (E. Coues ed. 1893)).

In addition, of the Hidatsa, Lewis and Clark wrote:

They claim no particular country, nor do they assign themselves any limits . . . The scarcity of fuel induces them to reside, during the cold season, in large bands, in camps, on different parts of the Missouri, as high up that river as the mouth of the river Yellow Stone. (Pl. Ex. 50: Travels in the Interior Parts of America 21 (1807)).

















