

BEFORE THE INDIAN CLAIMS COMMISSION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,)	
)	Docket No. 113
)	
PEMBINA BAND, AND KATHERINE CARL BARRETT, ET AL., EX. REL.,)	
PEMBINA BAND,)	Docket No. 246
)	
THE LITTLE SHELL BAND OF CHIPPEWA INDIANS, AND JOSEPH H. DUSSOME,)	
ET AL., EX. REL., SAID BAND,)	Docket No. 191
)	
BLANCHE PATENAUDE, ET AL., EX. REL.,)	
LITTLE SHELL BAND OF INDIANS AND)	Docket No. 221
THE CHIPPEWA CREE TRIBE,)	
)	
THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION,)	Docket Nos. 350-B
)	and 350-C
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 11, 1971

AMENDMENTS TO AND ADDITIONAL FINDINGS OF FACT

The Commission makes the following amendments to the findings of fact numbered 1 to 19, inclusive, made heretofore on the 30th day of June, 1970 (23 Ind. Cl. Comm. 315, 326);

In the fourth sentence of the second paragraph of Finding 1, the words "these plaintiffs" are stricken and in lieu thereof are substituted

"the plaintiffs in these two dockets."

Finding 19 is stricken in its entirety and in lieu thereof is substituted the following:

19. Considering all the evidence, we find that the Plains-Ojibwa exclusively used and occupied for a long time prior to 1905 an area bounded as follows:

(1) Beginning at the International Boundary where it is intersected by the western boundary of the lands described in Article 2 of the Treaty of October 2, 1863, 13 Stat. 667, with the Red Lake and Pembina Bands of Chippewa Indians, southerly on that western boundary to the point at which it intersects the Middle Branch of the Forest or Salt River;

(2) Then southwest to the northeasternmost point on Stump Lake, which is the point where Stump Lake is intersected by the stream running between Stump Lake and Coon Lake;

(3) Then westerly through the Devil's Lake Complex to the southeastern corner of the town of Minnewaukan;

(4) Then in a southwesterly direction to Dog Den Butte, which is part of the Missouri Coteau;

(5) Then in a northerly direction to the Souris or Mouse River;

(6) Then westerly along the Souris River to a point due west of the southwest tip of Buffalo Lodge Lake (the point where that lake is intersected by South Egg Creek);

(7) Then in a west-northwesterly direction along the northern boundary of the land described in call number (4) of finding number 26 entered in Docket Nos. 350-B, et al., March 30, 1971 (Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 25 Ind. Cl. Comm. 179, 209), until it intersects the shoreline of Lower Lostwood Lake, in Township 158 North, Range 91 West;

(8) Then due north to the International Boundary;

(9) Then east on the International Boundary to the point of beginning.

(All of the above-described locations are as depicted on the latest editions of the U. S. Geological Survey maps, Western United States, 1:250,000 series)

The Plains-Ojibwa did not exclusively use and occupy for a long time prior to 1905 any of the remainder of the land in North Dakota claimed in this case by plaintiffs.

The Commission makes the following findings of fact which are supplemental to the findings entered June 30, 1970:

17a. In 1876 representatives of the Turtle Mountain Band filed a memorial in Congress alleging that they had never ceded their lands in North Dakota, requesting that a reservation be established for them in the Turtle Mountain area, and requesting assistance from the Government. On April 18, 1876, the Senate Committee on Indian Affairs, after considering the memorial, reported a bill which authorized the setting aside of a reservation for the Turtle Mountain Band. In its report the committee stated:

The Turtle Mountain band of Chippewa Indians, and their forefathers for many generations, have inhabited and possessed, as fully and completely as any nation of Indians on this continent have ever possessed any region of country all that tract of land lying within the following boundaries, to wit: On the north by the boundary between the United States and the British possessions; on the east by the Red River of the North; on the south their boundary follows Goose River up the Middle Fork; thence up the head of Middle Fork; thence west-northwest to the junction of Beaver Lodge and Shyenne River; thence up Shyenne River to its headwaters; thence northwest to the headwaters of Little Knife River, a tributary of the Missouri River; and thence due north to the boundary between the United States and the British possessions. (Pl. Ex. 59, Dkt. 113: S. Rep. No. 275, 44th Cong., 1st Sess. (1876)).

17b. On September 25, 1880, James McLaughlin, agent at the Devil's Lake Agency, wrote to the Commissioner of Indian Affairs concerning the plight of the Pembina and Turtle Mountain Chippewas. He reported that white settlers were trespassing on the land of these Indians and recommended that a reservation be set aside for them. Specifically, Agent McLaughlin reported:

Inasmuch as the section of country west of the treaty line of 1863 running from Lake Chicot [Stump Lake] in a line nearly due west by Devils Lake and Dogs Den to the mouth of the Little Knife River on the Missouri, thence north to the "Roche Perce" or Hole in the Rock on the International line, thence east along the International line until its intersection with the treaty line of 1863, which tract is about 80 by 200 in extent, is recognized by all neighboring Indians as belonging to the Pembina and Turtle Mountain Bands of Chippewas, and as the same has never been ceded to the government, and the Indians being desirous to relinquish for a consideration to enable them to commence a life of agriculture, I would respectfully recommend it to the careful consideration of the Department. (Pl. Ex. 72, Dkt. 113, pp. 6-7: National Archives; Bureau of Indian Affairs, Letters Received, Devils Lake, 00012-00013.)

17c. The 1881 Annual Report of the Commissioner of Indian Affairs referred to the lands of the Turtle Mountain Band. The report stated:

The tract of country inhabited and claimed by them is north and northwest of Devils Lake, in Dakota, and is estimated to contain 9,500,000 acres. These lands have never been ceded to the United States, and the claim of the Turtle Mountain Band to ownership is based upon continuous occupation by them and their ancestors for many generations. That the Indian title to the country in question has never been extinguished or successfully disputed can not be denied, and according to the theory that has been adopted by the Government it would seem that these Indians have all the original rights in an unceded territory. (As reproduced in Pl. Ex. 166, Dkt. 113: S. Doc. No. 444, 56th Cong., 1st Sess. 104 (1900).)

The report did not give exact boundaries for the tract of land.

17d. On February 15, 1889, Commissioner of Indian Affairs John H. Oberly met with a delegation of Turtle Mountain Chippewa. A representative of the Indians stated that they claimed "[f]rom the Red River of the North going up Goose River and Cheyenne River and Knife River and North to the boundary line. . . ." C. F. Larrabee, Clerk of the Office of Indian Affairs, stated that the office had recognized the Turtle Mountain claim to approximately ten million acres. He stated that in his opinion the Turtle Mountain Band had

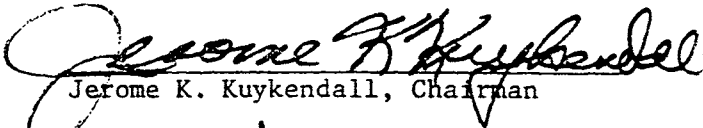
. . . as much right in that country as any Indians have who are original occupants. The maps of the U.S. for fifty years represented that as Chippewa country, all reports and histories that can be found in the library of Congress or anywhere else show Chippewa occupancy of that country. (Pl. Ex. 125, Dkt. 113: National Archives; Bureau of Indian Affairs, Letters Received (Land Division), No. 4652, 01963.)

17e. The McCumber Commission which was appointed by the President to negotiate with the Turtle Mountain Band for its land, was also instructed

to ascertain the extent of land to which the band had aboriginal title. In a report to the Senate, accompanying a bill which would have enacted the McCumber Agreement into law, the results of the Commission's inquiry appeared as follows:

The Commission then made a most thorough examination into the merits of the title and the extent of the territory embraced in the Indian title, and were forced to the conclusion that said Indian band held Indian title to the following-described territory in said State:

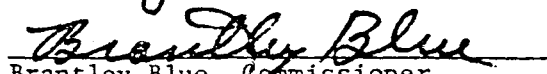
Commencing on the international boundary line between Canada and the United States at a point 5 miles west of the Grand Cote; thence southerly in a direct line to the most westerly source of the Goose River; thence in a line running from the source thereof in a westerly course, passing through the center of Devils Lake and continuing its westerly course to Maison du Chine; from thence in a northwesterly direction, striking a point on the Missouri River within gunshot sound of the Little Knife River; thence north to the said international boundary; thence east along said line to the place of beginning, containing between 8,000,000 and 10,000,000 acres. (Pl. Ex. 166, Dkt. 113: S. Doc. No. 444, 56th Cong., 1st Sess. 2 (1900).)


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret M. Pierce, Commissioner


Brantley Blue, Commissioner