

BEFORE THE INDIAN CLAIMS COMMISSION

THE THREE AFFILIATED TRIBES OF)	
THE FORT BERTHOLD RESERVATION,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 350-C
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 2, 1975

ADDITIONAL FINDINGS OF FACT

By accompanying order entered today under the above-captioned docket, finding of fact No. 25, previously entered herein on March 30, 1971, 25 Ind. Cl. Comm. 179, 209, is vacated. In addition, finding of fact No. 26, also entered on March 30, 1971, 25 Ind. Cl. Comm. at 209-10, as amended by the Commission's order of November 11, 1971, 26 Ind. Cl. Comm. 336, 364, is further amended in today's order by changing the dates "April 12, 1870" in the first paragraph and "1870" in the second paragraph to "May 20, 1891," and by redesignating said finding of fact No. 26 as finding of fact No. 33. Furthermore, the order entered today redesignates finding of fact No. 27, entered on March 30, 1971, 25 Ind. Cl. Comm. at 210-11, as finding of fact No. 34. Finally, the following findings of fact Nos. 25 through 32 are hereby entered as supplemental to findings of fact Nos. 1 through 24 previously entered herein and to the previously numbered findings of fact Nos. 26 and 27, now redesignated findings of fact Nos. 33 and 34, as amended.

25. Creation of Dakota Territory; 1861. On March 2, 1861, Congress enacted legislation creating the Territory of Dakota which encompassed what is now the States of North and South Dakota. See 12 Stat. 239 (1861). In section 1 of that act, Congress provided:

*** That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Dakota, until said tribe shall signify their assent to the President of the United States to be included within the said Territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed:***.

26. Like-A-Fishhook Village. By 1862, the Mandan, Hidatsa and Arikara tribes had consolidated in a single semi-permanent village known as Like-A-Fishhook, situated on the east bank of the Missouri River near Fort Berthold. This consolidation was completed when the Arikara, after a Sioux attack, fled from a site on the other side of the Missouri River where they were constructing a village and joined the Mandan and Hidatsa at Like-A-Fishhook Village.

From 1862 to 1870 all of the three tribes were based at Like-A-Fishhook Village. Sporadically during this period, the Sioux attacked

the village of the three affiliated tribes from the Sioux aboriginal territory southeast of Fort Berthold. Also during this period the three tribes complained of incursions by Canadian Indians (presumably the Assiniboine) upon lands claimed by the three affiliated tribes as far north and east of the Missouri River as the Canadian border. See Findings of Fact Nos. 23 and 24, 25 Ind. Cl. Comm. 179, 207-08 (1971). Other than the claims of the three affiliated tribes described in said findings and a reference by the commander at Fort Stevenson that the three tribes and the Assiniboine were hunting near the Mouse River in 1867, there are no references to use and occupancy by the three affiliated tribes of their aboriginal territory north and east of the Missouri River, nor are there references to usurpation of said territory by other tribes, during the period between 1862 and 1870.

27. Executive Order Reservation; 1870. By Executive Order of April 12, 1870 (I Kappler 883), President Ulysses S. Grant set aside a reservation for the three affiliated tribes. The reservation included a part of the tract of land which had been acknowledged to belong to the three affiliated tribes by the Fort Laramie Treaty of 1851 (11 Stat. 749), and also included a tract of land on the north side of the Missouri River around Like-A-Fishhook Village. In 1880, a portion of the reservation was restored to the public domain by Executive order and a small tract was added to the reservation (I Kappler 883).

28. Crow Flies High Band. About 1870-72, Crow Flies High, a Hidatsa Chief, after a quarrel among chiefs at Like-A-Fishhook Village, led about

140 members of the tribes up the Missouri River about 120 miles to the area near Fort Buford a few miles east of what is now the Montana-North Dakota border. This settlement near Fort Buford was primarily a winter camp and base for hunting expeditions north and south of the Missouri River as well as along the Yellowstone River in present eastern Montana. Summers were usually spent at another settlement called Crow Flies High Village which was located at the mouth of the Little Knife River about halfway between Forts Berthold and Buford.

Crow Flies High and his band lived off the Fort Berthold Reservation for a period of almost 25 years. During this time they ranged over a large area both north and south of the Missouri primarily in search of sustenance. (See finding of fact No. 29, infra.) They lived at several camps along the Missouri River between Forts Berthold and Buford supplying fuel to passing steamers. There was frequent intercourse between the Crow Flies High Band and those members of the three tribes who were living at Fort Berthold. In 1884 the band was ordered away from Fort Buford and their activities became centered at Crow Flies High Village. Finally in 1894, the band returned permanently to the reservation at Fort Berthold and relinquished their traditional mode of living.

29. Use and Occupancy of the Aboriginal Area After 1870. The progressive depletion of game along the Missouri River as well as in the area north and east of the river brought about a situation after 1870 whereby incursions by other tribes within this area ceased. At the same time the three affiliated tribes found it necessary to hunt for longer

periods over wider areas of their aboriginal lands. (Pl. Ex. DT-18, at 155). During the 1870s and 1880s the tribes undertook annual hunts to the Mouse River near Minot in the northeastern portion of the award area. There are several references during the period 1870 to 1892 to Indians of the three affiliated tribes (presumably from the Crow Flies High Band) hunting and claiming the lands in present Williams County which approximately comprises the western one-third of the award area. General Hugh L. Scott who served at Forts Buford and Lincoln (the latter near Bismarck) from 1876 to 1886, later related that during this time members of the three affiliated tribes from both the Fort Berthold Reservation and from the Crow Flies High Band hunted in every direction from the Missouri River as far north as the Canadian border and as far east as Devils Lake. General Scott stated that these lands were acknowledged to belong to the three affiliated tribes (Pl. Ex. DT-2).

Scattered references to war parties of the three affiliated tribes during the period after 1870, indicate that the raids extended beyond their aboriginal area. An 1872 reference mentions a war party to Devils Lake which is far to the east of the award area. (Pl. Ex. DT-24, at 221-222) An 1879 reference indicates that the three affiliated tribes defended the territory on the Missouri River beyond Fort Buford which is at the western boundary of the award area. (Pl. Ex. DT-20)

30. The Fort Berthold Reservation in the 1870s and 1880s. While the Indians of the three affiliated tribes continued to use their aboriginal lands, the Government in the mid-1870s began to encourage the development

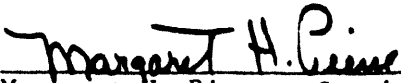
of agriculture to bring the three tribes to self-sufficiency. Despite the harsh climate and lack of arable land, the Indians slowly developed their lands for farming so that by 1890 they were earning about 70 percent of their subsistence from the land. In 1882 a group of 20 families had voluntarily left the Like-A-Fishhook Village to farm individual plots of land.

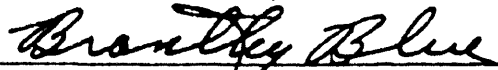
On May 15, 1886, Congress appropriated funds "*** to enable said Secretary [of the Interior] to negotiate with the various bands or tribes of Indians *** at Fort Berthold, in Dakota, for a reduction of their *** [reservation], or for removal therefrom to [another reservation] ***; but no agreement made shall take effect until ratified by Congress." (24 Stat. 29, 44) Despite the latter clause and the fact that an agreement with the three affiliated tribes was not reached until December 14, 1886, allotment had begun in 1885.


31. The Agreement of December 14, 1886. Under an agreement between representatives of the three affiliated tribes and the United States Government, represented by Commissioners of the Department of the Interior, reached at Fort Berthold on December 14, 1886, 26 Stat. 989, 1032-35, the Indians agreed to relinquish a large portion of the then Fort Berthold Reservation in consideration of the payment to them of \$80,000 annually for ten years. It was further agreed that the lands within the diminished reservation would be surveyed and allotted in severalty to the Indians of the three affiliated tribes with patents then issued in the name of the individual allottees declaring the lands so allotted and patented to be held by the United States in trust for the individual allottees for a

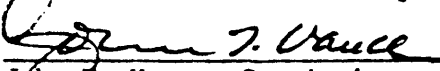
period of 25 years, at which time each said allotment would be conveyed in fee by patent to the individual allottee. Lands in excess of those so allotted would be held in trust by the United States for the benefit of the tribes and, after 25 years, conveyed in fee by patent to the tribes in common. The agreement further provided that its terms would not be binding upon either party until ratified by Congress. The agreement was finally ratified by Congress four and one-half years later, on March 3, 1891. At the same time Congress made certain modifications to the agreement and provided that the act containing the agreement as so modified would become effective only upon the acceptance of the modifications by the three affiliated tribes, said acceptance to be made known by Presidential proclamation. On May 20, 1891, the President so proclaimed and the agreement of December 14, 1886, became effective. (27 Stat. 979)

32. Date of Extinguishment of Aboriginal Title. The plaintiffs' aboriginal title to their lands in the present State of North Dakota was extinguished on the date the agreement of December 14, 1886, between the United States and the three affiliated tribes became effective. This date was May 20, 1891, the date the President proclaimed that the three affiliated tribes had accepted the modifications made by Congress to the agreement.


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner