

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY)	
IN MINNESOTA, et al.,)	
))	
Plaintiffs,)	
))	
v.)	Docket No. 363
))	(2nd Claim, amended)
THE UNITED STATES OF AMERICA,)	(Treaty of 1867,
))	Agreement of 1872)
Defendant.)	

Decided: September 25, 1975

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Parties.

The plaintiffs in this case are the Lower Sioux Indian Community in Minnesota, the Prairie Island Indian Community in Minnesota, and a number of individuals, acting on behalf of the Sioux of the Mississippi. The Sioux of the Mississippi were the eastern division of the Dakota people comprising, among others, the Sisseton and Wahpeton bands. The present claim is prosecuted by said plaintiffs on behalf of the Sisseton and Wahpeton bands of Sioux Indians who were parties to the Agreement of September 20, 1872, 2 Kappler 1057, amended and confirmed by the Act of February 14, 1873, c. 138, 17 Stat. 437, 456, amendments accepted by the Indians on May 2 and 19, 1873, 2 Kappler 1059, 1063; agreement as amended reconfirmed by Act of June 22, 1874, c. 389, 18 Stat. 146, 167.

2. Capacity to sue.

The Lower Sioux Indian Community in Minnesota and the Prairie Island

Indian Community in Minnesota are organized identifiable groups of Indians authorized to represent their respective members, and in a representative capacity are entitled to bring and maintain this suit under Section 2 of the Indian Claims Commission Act on behalf of the Mississippi Sioux and the bands thereof who participated in the agreement aforesaid. The claims asserted in this suit to the area described in Finding 3, below, have not been brought before the Indian Claims Commission by any other plaintiff.

3. The area in suit.

This action involves a tract of country in southeastern North Dakota and northeastern South Dakota described in Article 2 of the Treaty of February 19, 1867, 15 Stat. 505, as follows:

. . . bounded on the south and east by the treaty-line of 1851 and the Red river of the North to the mouth of Goose river, on the north by the Goose River and a line running from the source thereof by the most westerly point of Devil's lake to the Chief's Bluff at the head of James river, and on the west by the James river to the mouth of Mocasín river, and thence to Kampeska lake.

The treaty-line of 1851 referred to in the preceding quotation is the boundary described in Article 2 of the Treaty of Traverse des Sioux of July 23, 1851 (10 Stat. 949), as follows:

. . . Beginning at the junction of the Buffalo River with the Red River of the north; thence along the western bank of said Red River of the north, to the mouth of the Sioux Wood River; thence along the western bank of said Sioux Wood River to Lake Traverse; thence, along the western shore of said lake, to the southern extremity thereof; thence in a direct line, to the junction of Kampeska Lake with the Tchan-kas-an-data or Sioux River. . .

The Devil's Lake and Lake Traverse reservations in the aforesaid tract set aside by Articles III and IV of the 1867 Treaty are excluded from the areas involved in this action.

4. Additional area put in issue by amendment to petition, the Southern Triangle.

By amendment to the petition accepted by order of this Commission on September 22, 1971 (26 Ind. Cl. Comm. 270), the following additional area is also involved in this action:

Commencing at the mouth of Snake Creek on the James River; thence down the James River to the mouth of Timber Creek; thence by a direct line east south-easterly to the mouth of Stray Horse Creek on the Big Sioux River; thence up the Big Sioux River to Lake Kameska; and thence in a direct line to the point of beginning.

5. Boundaries recognized by Prairie du Chien treaty.

The Mississippi Sioux were parties to the Treaty of Prairie du Chien of August 18, 1825, 7 Stat. 272.

In Article 5 of said treaty the Mississippi Sioux agreed with the Chippewas on the following boundary:

. . . the line dividing their respective countries shall commence at the Chippewa River, half a day's march below the falls; and from thence it shall run to Red Cedar River, immediately below the Falls; from thence to the St. Croix River, which it strikes at a place called the standing cedar, about a day's paddle in a canoe, above the Lake at the mouth of that river; thence passing between two lakes called by the Chippewas "Green Lakes," and by the Sioux "the lakes they bury the Eagles in," and from thence to the standing cedar, that "the Sioux Split;" thence to Rum River, crossing it at the mouth of a small creek called choaking creek, a long day's march from the Mississippi; thence to a point of woods that projects into the prairie, half a day's

march from the Mississippi; thence in a straight line to the mouth of the first river which enters the Mississippi on its west side above the mouth of Sac river; thence ascending the said river (above the mouth of Sac river) to a small lake at its source; thence in a direct line to a lake at the head of Prairie river, which is supposed to enter the Crow Wing river on its South side; thence to Otter-tail lake Portage; thence to said Otter-tail lake, and down through the middle thereof, to its outlet; thence in a direct line, so as to strike Buffalo river, half way from its source to its mouth, and down the said river to Red River; thence descending Red river to the mouth of Outard or Goose creek. . . .

That part of the eastern boundary of the area in suit herein which extends down the Red River of the North between its junction with the Buffalo River and the mouth of Goose Creek coincides with part of the Sioux Chippewa boundary described in the Treaty of Prairie du Chien.

After the signing of the Prairie du Chien Treaty, the Chippewa and Sioux agreed to extend the boundary between the two nations west from the mouth of Goose River, as follows:

. . . then ascending the course of Goose River up to its source; then taking a due westerly course and passing through the center of Devil's Lake; after leaving the lake, continuing its westerly course to Maison du Chien; from thence taking a northwesterly direction to its terminus at a point on the Missouri River, within gunshot sound of Little Knife River.

The agreement extending the boundary is known as the Sweet Corn Agreement, from the name of one of the Sioux chiefs who signed it. See Commissioner of Indian Affairs, Annual Report for the Year 1872 at 119 (plaintiff's exhibit 77, defendant's exhibit W-93). It was never

ratified by the United States. The Sweet Corn line was the source of the north boundary of the Sisseton and Wahpeton land described in the 1867 treaty; but insofar as the 1867 treaty boundary may differ from it, the treaty boundary prevails.

This Commission held the land north of the Goose River to have been owned by the Pembina and Red Lake Chippewa, in Red Lake, Pembina and White Earth Bands v. United States, Docket 18-A, 6 Ind. Cl. Comm. 247 (1958), aff'd in part and rev'd in part, 164 Ct. Cl. 389 (1964); and the Commission held the land north of the subject tract and west of the Goose River to have been owned by the Turtle Mountain and other Chippewa Indians, in Turtle Mountain Band v. United States, Docket 113 et al., 23 Ind. Cl. Comm. 315 (1970), modified and aff'd, 203 Ct. Cl. 426, 490 F.2d 935 (1974). The area involved in the Turtle Mountain case appears to a limited extent to overlap the land in suit in the instant case.

6. Area in suit surrounded on three sides by Sioux lands.

The area in suit is surrounded on three sides by lands formerly owned by Sioux groups. The Sioux of the Mississippi owned the land known as Royce Area 289, which adjoined the subject area to the east. Sisseton and Wahpeton Bands v. United States, Docket 142 et al., 10 Ind. Cl. Comm. 137, 187 (1962). The Teton and Yanktonais Sioux owned the adjacent land to the west. Sioux Nation v. United States, Docket 74 et al., 23 Ind. Cl. Comm. 419, 424 (1970), aff'd 204 Ct. Cl. 148 (1974). And land to the south was owned by the Yankton Sioux, Yankton Sioux Tribe v. United States, Docket 332-C, 24 Ind. Cl. Comm. 208 (1970), aff'd 204 Ct. Cl. 148 (1974).

7. United States forfeited Sisseton and Wahpeton Reservation in Minnesota and appointed a head chief over both bands.

Following the treaty of Traverse des Sioux of July 18, 1851, 10 Stat. 949, in which they ceded their lands in Iowa and that part of Minnesota Territory which later became the State of Minnesota, the main body of the Sisseton and Wahpeton tribes took up residence on a reservation on the Minnesota River in southwestern Minnesota and extending into a small portion of present-day South Dakota. The Sissetons, however, continued to hunt buffalo over a wide area of North and South Dakota.

During the Little Crow War, the United States forfeited the plaintiffs' reservation. See Act of February 16, 1863, c. 37, 12 Stat. 652. The Indians were driven from the reservation, and fled in Dakota Territory.

In 1867, the Government put a new tribal administration in power, headed by its former chief scout, the mixed-blood Gabriel Renville, who was designated head chief of the combined Sisseton and Wahpeton bands. No such office had existed before. In this capacity Renville signed the 1867 treaty and 1872 agreement referred to in subsequent findings herein.

8. Treaty of 1867.

In the Treaty of February 19, 1867 (15 Stat. 505), the Sisseton and Wahpeton Bands ceded to the Government the right to construct wagon roads, railroads, mail stations, telegraph lines, and other public improvements across lands claimed by said bands. The lands claimed in this treaty are those described in Finding 3, above.

Two new reservations were established, at Lake Traverse and Devil's Lake, under articles 3 and 4 of the 1867 treaty, for the resettlement of the combined bands. Members of both bands were settled on each reservation.

9. Article 4 of the 1867 treaty provided for Cutheads on Devil's Lake Reservation.

Article 4 of the treaty of 1867 provided that the Devil's Lake Reservation should be for the Cuthead Yanktonai Sioux as well as for the Sisseton and Wahpeton. However, neither the Yanktonais nor the Cuthead Band were party to the 1867 treaty, and no individual Yanktonais or Cutheads signed it.

10. Special Commission appointed pursuant to Act of Congress investigated Sisseton-Wahpeton title to area in suit and reported that title had been recognized by the United States.

By the Act of June 7, 1872, c. 325, 17 Stat. 281, Congress directed the Secretary of the Interior to examine and report what title or interest the Sisseton and Wahpeton bands had in the lands in suit described above in Finding 3, and what compensation, if any, should be made for the extinguishment of such title or interest.

The Secretary of the Interior appointed the Reverend Moses N. Adams, U.S. Indian Agent at Lake Traverse, Major William H. Forbes, U.S. Indian Agent at Devil's Lake, and James Smith, Jr., as a commission to make a full investigation of the title situation, and if title should be found good, to negotiate with the Indians for its relinquishment.

The commission investigated, and reported on October 3, 1872, in part, as follows:

We therefore find and report that the said bands had, at the time of making said treaty, in 1867, the rightful title and occupancy of all said lands, subject to the fee and pre-emption rights of the United States. The right being ceded to the Government of constructing roads, &c., as provided in said Article II, did not extinguish the right of occupancy, or interfere with the possession of said bands, so far as such occupancy and possession did not conflict with or abridge the right ceded, of constructing roads, &c.

The commission accompanied its report with a signed agreement of the said Indians containing among other language the following:

First. To cede, sell, and relinquish to the United States all their right, title, and interest in and to all lands and territory, particularly described in article two (2) of said treaty, as well as all lands in the Territory of Dakota to which they have title or interest, excepting the said tracts particularly described and bounded in articles three (3) and four (4) of said treaty, which last-named tracts and territory are expressly reserved as permanent reservations for occupancy and cultivation, as contemplated by articles eight, (8,) nine, (9,) and ten (10) of said treaty.

Second. That, in consideration of said cession and relinquishment, the United States shall advance and pay, annually, for the term of ten (10) years from and after the acceptance by the United States of the proposition herein submitted, eighty thousand (80,000) dollars, to be expended under the direction of the President of the United States on the plan and in accordance with the provisions of the treaty aforesaid, dated February 19, 1867, for goods and provisions, for the erection of manual-labor and public school-houses, and for the support of manual-labor and public schools, and in the erection of mills, blacksmithshops, and other workshops, and to aid in opening farms, breaking land, and fencing the same, and in furnishing agricultural implements,

oxen, and milch-cows, and such other beneficial objects as may be deemed most conducive to the prosperity and happiness of the Sisseton and Wahpeton bands of Dakota or Sioux Indians entitled thereto according to the said treaty of February 19, 1867. Such annual appropriation or consideration to be apportioned to the Sisseton and Devil's Lake agencies, in proportion to the number of Indians of the said bands located upon the Lake Traverse and Devil's Lake reservations respectively. Such apportionment to be made upon the basis of the annual reports or returns of the agents in charge. Said consideration, amounting, in the aggregate, to eight hundred thousand (800,000) dollars, payable as aforesaid, without interest.

The Commission's report was accepted by the Commissioner of Indian Affairs and published in his annual report for 1872. The Commissioner recommended the confirmation by Congress of the action of the commission, and that legislation necessary to perfect the purchase of the Sisseton and Wahpeton claim to the lands in suit and to appropriate the first installment of the purchase money be enacted by Congress at its next session. Relevant extracts from the 1872 report of the Commissioner of Indian Affairs appear in exhibits 77 and W-93 in evidence in this case.

11. Ensuing Congressional action.

The Commissioner of Indian Affairs' report for 1872 was transmitted to Congress. With that report before it, Congress, at its next session, confirmed those parts of the agreement negotiated by the Commission which provided for cession of the lands in suit and payment of consideration therefor (Articles First and Second, quoted above in finding 10). Congress struck out the remaining sections of the agreement. See Act of February 14, 1873, c. 138, 17 Stat. 437, 457. By the same act, Congress appropriated the first installment of purchase money, but provided that no part thereof might be expended until the Indians had

ratified the amendment made to the agreement by the said act. The Sisseton and Wahpeton Indians at Lake Traverse ratified the amended agreement on May 2, 1873; and the Sisseton and Wahpeton Indians at Devil's Lake ratified the amended agreement on May 19, 1873. The agreement as amended was again confirmed by Congress in the Act of June 22, 1874, c. 389, 18 Stat. 146, 167.

12. Cutheads actually settled at Devil's Lake Reservation.

A number of Cuthead Sioux did settle on the Devil's Lake Reservation following the treaty of 1867. The chief of this group was Waanatan II (whose name was also spelled Wanaita, Wah-na-ta and several other ways). Waanatan II's father was a Cuthead Yanktonai chief, and his mother was a Sisseton woman. His band included both Cutheads and Sissetons.

13. Waanatan II signed agreement of 1872 and ratification of Congressional amendment to that agreement; but the Cuthead band is not a party thereto.

The aforesaid Waanatan II signed the original agreement of September 30, 1872, and again on May 19, 1873, signed the Indian ratification of the Congressional amendment to the agreement. Waanatan II is described on the agreement as "hereditary chief of Sissetons and Cut-Heads." Neither the Cuthead band nor the Yanktonai band is a party to the 1872 agreement.

14. Use of "Southern Triangle" by Five Lodges band of Sisseton Indians.

The "southern triangle" described in Finding 4, above, consisted of well watered grassland and supported herds of buffalo, which at unpredictable times wandered in and out of it from adjacent areas. The principal use of the area by the Indians was for buffalo hunting.

This area lay in the midst of the Sioux country as described by (1) Zebulon Pike in 1805, (2) William H. Keating in 1823, (3) Stephen H. Riggs in 1841, and (4) Edwin Thompson Denig in 1855.

The area was used principally by the Five Lodges group of Sissetons from at least 1834 until they fled before the U.S. Army during the Little Crow War of 1862-65. In accord with Dakota custom other Sioux Indians were free to use this area; and Yanktonais and Yanktons did so occasionally, always in amity and frequently in cooperation with the Sissetons. The evidence does not disclose any other Indian use of the area.

CONCLUSIONS


1. The Sisseton-Wahpeton Bands who entered into the agreement of September 20, 1872, as modified and accepted by the United States and the Bands had recognized title to the area described in Finding 3.

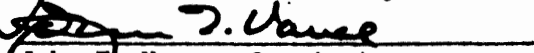
2. The Cuthead Sioux who settled at the Devil's Lake Reservation became members of the Sisseton and Wahpeton combined bands.


3. The plaintiff Sisseton band had aboriginal title to the "southern triangle" described in Finding 4.

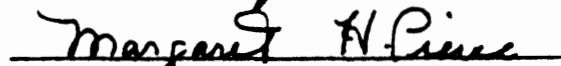
4. The plaintiffs' interest in all the lands in suit passed to the United States on May 19, 1873, the date when Indian ratification of

the amended agreement of 1872 became effective and the duty of the United States to pay the agreed consideration became unconditional.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner