

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: December 27, 1977

Appearances:

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

Charles A. Hobbs and John M. Facciola, Attorneys for Plaintiffs in Docket No. 332-C. Wilkinson, Cragun & Barker, and Angelo A. Iadarola were on the briefs.

Craig Decker, with whom was Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

The Commission has before it Docket 74 plaintiffs' motion for rehearing of our decision of August 25, 1977, in these consolidated dockets, 40 Ind. Cl. Comm. 454. In that decision the Commission determined that there was not sufficient evidence in the record to apportion the Sioux-Fort Laramie lands on the basis of the numbers of each Sioux tribe which actually used the land. Therefore, based on its interpretation of the remand order of the Court of Claims, 205 Ct. Cl. 148 (1974),

the Commission reentered its determination of December 2, 1970, 24 Ind. Cl. Comm. 147, that the Yankton Sioux held a 17% interest, and the Teton Sioux an 83% interest, in the Sioux-Fort Laramie area.

The Docket 74 plaintiffs (Tetons) move for rehearing on three grounds. First, they assert that the Commission's finding that during the period 1838 through 1858 Fort Lookout was located west of the Missouri River (finding 2, 40 Ind. Cl. Comm. 477) is contrary to prior Commission findings and the evidence. Second, they assert that many of the Commission's remaining findings are erroneous, and that the Commission failed to find many significant facts. Third they contend that the Commission erred as a matter of law in failing to carry out the remand order of the Court of Claims. The Docket 332-C plaintiff (Yankton) supports the Commission's decision as being correct both in fact and law. For the reasons indicated below, the Commission concludes that its decision of August 25, 1977, was erroneous. We shall grant the Tetons' motion for rehearing.

Fort Lookout

The Tetons assert that the Commission's finding on Fort Lookout is contrary to findings entered in Docket 332-C in 1970 (Yankton Sioux Tribe v. United States, 24 Ind. Cl. Comm. 208, 228-32). We have re-examined those findings, and find no inconsistency with a conclusion that Fort Lookout was west of the Missouri.

The findings referring to Agent Moore, Agent Hatton, and Agent Vaughn, do not locate Fort Lookout either east or west of the Missouri. The finding referring to Agent Redfield was quoted out of context by

the Tetons. The actual finding stated that Redfield found Yankton villages "on the eastern bank of the Missouri above the Big Sioux River, in the vicinity of the James River, at Fort Randall, and at Fort Lookout."

24 Ind. Cl. Comm. at 231. The Teton position seems to be that the Commission placed each of these sites "on the eastern bank of the Missouri." The record is clear, however, that Fort Randall was west of the Missouri. Therefore, this Teton assertion is erroneous.

As to the finding on Warren, the Commission did find that he reported the Yanktons north of the Missouri between the Big Sioux River and Fort Lookout. However, Warren was merely using Fort Lookout as a well-known landmark on the Missouri. Warren's statement no more locates Fort Lookout east (or north) of the Missouri than does Denig's statement (40 Ind. Cl. Comm. at 474), that the Yanktons were east of the Missouri between the Vermillion and Fort Pierre, place Fort Pierre east of the river.

The Tetons further assert that the finding on Fort Lookout was contrary to the testimony of the experts in the case. This is true only in part. Dr. John L. Champe, expert witness for the Yanktons, testified that Fort Lookout was west of the Missouri River for the entire period covered by the evidence. Tr. Vol. III, pp. 152-56, 161-68.

Finally, the Tetons contend that there is no support in the record for the Commission's finding on Fort Lookout. This is not true. There are no less than nine maps in evidence which show Fort Lookout on the west side of the Missouri. See Sioux Exhibits 509, 512, 515, 516, 519,

Yankton Exhibits M-2, M-5, M-6, Docket 332-A Plaintiff's Exhibit 269. We were unable to find any maps which placed it east of the river.

In sum we conclude that our finding that Fort Lookout was west of the Missouri River is supported by a preponderance of evidence and is correct.

Miscellaneous Factual Errors

The Tetons contend that the Commission has made five other factual errors. We have reexamined the evidence, and we find that with respect to the Kearny-Cooke expedition (finding 17), and the report of Agent Redfield (finding 64), the Tetons are correct. We have therefore entered amended findings.

Error of Law

Docket 74 plaintiffs contend that the Commission's decision not to reapportion the Fort Laramie land between the Yanktons and Tetons, on the ground that there was insufficient evidence to do so, was erroneous as a matter of law. The Tetons assert that there is sufficient evidence in the record to determine the relative numbers of each group using the land.

The Commission's difficulty with the evidence, and the reasons for its conclusion that the evidence was insufficient to determine the respective numbers of Yanktons and Tetons using the land, is explained in the Commission's opinion, 40 Ind. Cl. Comm. 468-75. The Tetons' motion, and the oral argument held November 10, 1977, have now convinced the

Commission that its decision of August 25, 1977, was based on too narrow a reading of the mandate of the Court of Claims.

In our earlier decision we read the court's mandate as requiring us to determine from the evidence the exact numbers of Tetons and Yanktons which were using the Fort Laramie land. Therefore, when we were unable to determine these numbers with any degree of accuracy, we followed the second part of the court's mandate and reentered our apportionment of December 2, 1970. A careful rereading of the court's decision, however, indicates that the court did not expect such an exact determination by the Commission. A determination of the comparative populations of the two groups using the land, or the percentage of the total population of each group using the land, is sufficient to satisfy the court's mandate.

With this reinterpretation of the court's mandate in mind, we have reexamined the record and conclude that the findings we entered on August 25, 1977, are sufficient for us to determine the approximate percentage of each Sioux group that was using the Sioux-Fort Laramie lands. Specifically, our findings covering the periods immediately preceding and following the Fort Laramie Treaty support the following conclusions: The Oglalas spent a considerable portion of their time outside of the Sioux-Fort Laramie area. Their hunting activities took place mostly in the areas to the south of the North Platte River and to the west of the subject area. The Brules, although also conducting hunting activities outside the tract, did conduct a greater proportion of their activities inside the tract than did the Oglalas. The

Minneconjous also conducted some of their activities to the south and west of the Sioux-Fort Laramie area, but the greater portion of their time was spent within the Sioux-Fort Laramie lands. The Sans Arcs, Hunkpapa, Two Kettle, and Blackfeet Sioux were almost always located within the subject area. The more northern Teton bands did spend part of their time east of the Missouri, and were credited, along with the Yanktonais, with aboriginal title to lands east of the river (see 23 Ind. Cl. Comm. 419). The Yanktons spent most of their time east of the Missouri River in Royce Area 410. However, there was Yankton activity in the Sioux-Fort Laramie lands, particularly in that area close to the Missouri.

Upon weighing the evidence, including contemporary sightings and reports, and the testimony of the expert witnesses, the Commission is of the opinion that around the time of the Fort Laramie Treaty of 1851 approximately two-thirds of the Brules, 30% of the Oglalas, 75% of the Minneconjous, 90% of the Two Kettle, Hunkpapa, Sans Arcs, and Blackfeet Sioux, and 25% of the Yanktons used and occupied the Sioux-Fort Laramie lands.

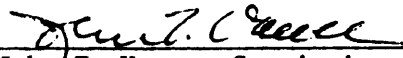
The Commission has previously made findings on the total populations of the various Sioux groups. See 24 Ind. Cl. Comm. at 173-74. ^{1/} Applying

1/ Those findings show the respective band populations, counted in lodges, as follows:

	<u>Vaughan-Twiss</u>	<u>Harvey</u>	<u>Warren</u>
Brule	400	260	380
Oglala	450	350	460
Minneconjous	225	385	200
Blackfeet	150	160	165
Two Kettle	165	60	100
Hunkpapa	280	380	365
Sans Arc	160	150	170
Yankton	375	375	360

to these population figures the percentage of usage indicated above, we are able to calculate the respective interests of the Yanktons and the Teton^{2/} in the Sioux-Fort Laramie lands.

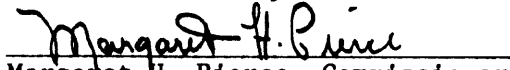
Based on these calculations, the Commission concludes that the Yankton Sioux held an undivided 7% interest, and the Teton Sioux an undivided 93% interest, in the Sioux Fort Laramie lands.


John T. Vance, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

^{2/} For example, using the Vaughan-Twiss figures, and multiplying by the above indicated percentages, we get the following results:

Total Population x % of use = Population Using Land

Brule	400	66-2/3	267
Oglala	450	30	135
Minneconjous	225	75	169
Blackfeet	150	90	135
Two Kettle	165	90	149
Hunkpapa	280	90	252
Sans Arc	160	90	144
Yankton	375	25	94
			<u>1,345</u>

Yankton: 94 lodges out of 1,345 = 7%

Teton: 1,251 lodges out of 1,345 = 93%

The Commission used the same method with the Harvey and Warren estimates.