

THE TETON SIOUX
AND
THE INDIAN CLAIMS COMMISSION

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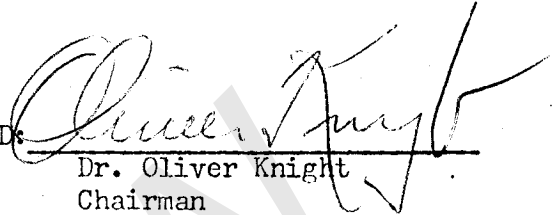
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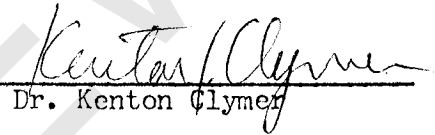
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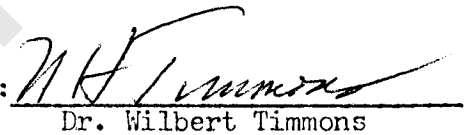
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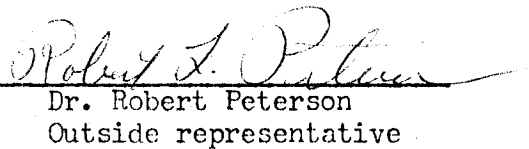
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The Teton Sioux and The Indian Claims Commission

At the root of nearly all the land cession claims by Indian tribes against the United States is the question of title. That is to say, before any determination of any particular land cession case could be considered by the United States Court of Claims or the Indian Claims Commission it was necessary to determine beyond a doubt that the plaintiffs (the Indian tribes) did, in fact, own the land prior to the cession. In the case of the Sioux, it became necessary to trace their migration from their original habitat at the headwaters of the Mississippi River to the Dakota area, which at the time under consideration in this paper took in parts of the present states of North and South Dakota, Nebraska, Wyoming, and Montana.

In the 17th century, the Sioux were settled in a broad area at the headwaters of the Mississippi River. There were two main groups, the Yanktons and Tetons, and the Sioux de l'Est. The first of these two groups began to move west and south around 1650 as a result of conflicts with the neighboring Cree Indians who had been armed by the French. The second group, which will not be discussed in this paper, did not begin to migrate until after 1735. The Sioux migration westward was temporarily stopped at the Missouri River by the powerful and numerous Arikara tribe. However, fate played into the hands of the Sioux. Three smallpox epidemics between 1772 and 1780 reduced the Arikara population by four-fifths. The Sioux had by now obtained horses and firearms and were in a position to move on farther west. By about 1775 they had reached the Black Hills country.¹

So it was that the Sioux, made up of some nine tribes, were settled in the Dakota (formerly spelled Dahcotah) country when this land became part of the United States by virtue of the Louisiana Purchase of 1803.² Of the nine

tribes previously mentioned, only seven belonged to the Teton or Dahcotah Sioux: The Oglala (sometimes spelled Ogallala); the Brule (originally given the French spelling of Brûlé); the Hunkpapa; the Miniconjou; the Sans Arc; the Two Kettle; and the Black Feet (not to be confused with the major, large and powerful tribe of the same name).

As a result of numerous depredations against white emigrants in the territory dominated by the Oglala Sioux, the United States government negotiated the first treaty with the Sioux. It was drawn up and signed at the mouth of the Teton River on July 5, 1825, between Brigadier General Henry Atkinson, United States Army, and Major Benjamin O'Fallon, Indian Agent, representing the President, and Chiefs, Head-men, and Warriors of the Oglala tribe of Sioux Indians. In this treaty the Indians on their part agreed to recognize the supremacy of the United, while the United States agreed to ". . .receive the Ogallala band of Sioux into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States."³

By the late 1840s it became apparent that the Treaty of 1825 did not contain the necessary arrangements to protect the emigrants passing through Sioux territory. Therefore, after long sessions, feasting, and much smoking of the peace pipe, the Treaty of 1851, known as the Fort Laramie Treaty, was signed on September 17, 1851. The United States was represented by D. D. Mitchell, superintendent of Indian affairs, and Thomas Fitzpatrick, Indian agent. Representatives of the Sioux or Dahcotahs, Cheyennes, Crows, Arapahoes, Assiniboines, Gros Ventre, Mandans, and Arikaras signed for the Indians.⁴

The main purpose of this treaty, to secure safe passage of emigrants through the Indian territory, was to be brought about by securing of peace among the Indian tribes that signed the treaty and to describe boundaries for each tribe, within which the tribe was responsible for maintaining order. The boundaries set out in this treaty form the basis for most of the land cession claims that were made by these tribes in years that followed. In the original document signed at Fort Laramie, the government agreed to pay the Indians " . . . the sum of fifty thousand dollars per annum for the term of fifty years. . . ." In the version ratified by the United States Senate, the amount was held the same but the period of payment was reduced to ten years.⁵ In regard to whether this treaty was a recognition of title to lands mentioned in the treaty, an historical reference in the U.S. Code had this to say: "Even though the language of the Treaty of Fort Laramie was not technical language of recognition of title, the fact that the United States participated in a treaty in which various Indian tribes described and recognized each others territories and, consider the overriding purpose of the treaty, to secure free passage for emigrants across the land of the tribes, was recognition of tribes' titles to areas for which they were held responsible." Precedents were then cited to support this reasoning (Crow Tribe of Indians v. United States., Ct. Cl. 1960, 284, among others).⁶

In claims brought before the Indian Claims Commission, the lands and boundaries cited in this treaty are referred to as the Fort Laramie lands and have a strong bearing on the decisions handed down by the Commission. There was always some question as to whether this treaty was legally binding on both parties as a result of the amendment made by the Senate prior to ratification. Charles J. Kappler has this to say about it: "This treaty as signed was ratified by the Senate with an amendment changing the annuity in Article 7 from fifty to ten years, subject to acceptance by the tribes.

Assent of all tribes except the Crow was procured. . .and in subsequent agreements this treaty has been recognized as in force."⁷

One of the Sioux tribes that did not sign the Treaty of 1851 was the Oglala. Since it was this particular tribe that controlled the emigrant road, it became imperative to negotiate a treaty with them for the protection of the emigrants. The Treaty of October 28, 1865, was then negotiated. The Oglala agreed on their part to protect persons and property and to use their influence, and force if necessary, to prevent other bands of the Dakota Indians, or other adjacent tribes, from making hostile demonstrations against the government or people of the United States. They further agreed to withdraw from overland routes ". . .already established or hereafter to be established through their country." The United States on their part agreed to ". . .pay to the said band the sum of ten thousand dollars annually for twenty years, in such articles as the Secretary of the Interior may direct: Provided, that said band, so represented in council, shall faithfully conform to the requirements of this treaty."⁸

To understand the events leading up to the next treaty, the Treaty of 1868, it is necessary to return to the aftermath of the Fort Laramie Treaty of 1851. Almost immediately the Sioux and their deadly enemies, the Crows, resumed hostilities. There was a general disregard of the treaty, if not an actual hostility to it. D. D. Mitchell stated that the arrangement was hardly adequate in the first place, that fifty thousand dollars was a small amount to be distributed among at least fifty thousand Indians, and then the Senate confused matters by reducing the period from fifty years to fifteen.⁹

Discovery of gold in Montana in 1861, the transfer of the Overland Stage northward to the Platte as a result of the Civil War, the Minnesota massacres, the Sand Creek massacre, the battle of Killdeer Mountain, and finally the

Mormon Cow incident, were some of the reasons for the outbreak of hostilities which resulted in the so-called Powder River War of 1866-67.¹⁰

By the summer of 1866, the government, as well as the American public in general, realized that something must be done to bring matters under control in the West. However, by the summer of 1867 the hostiles (those Indians who refused to live on the reservations or at the agencies) had dealt the army its worst defeat in the West near Fort Phil Kearny when Lt. Col. W. J. Fetterman and 80 of his men were killed while attempting to relieve a wood detail under attack. By this time, the hostile Indians had almost complete control over the Bozeman Road (a road branching north from the Overland Road from Fort Laramie to the Montana mining fields) and the Powder River area. The leader of the hostiles was the Oglala chief Red Cloud. Red Cloud refused to join in any negotiations aimed at ending the hostilities until the government agreed to close the Bozeman Road and abandon the forts along its route. Finally on November 5, 1867, Red Cloud made his mark on the treaty then being negotiated. The treaty was approved on April 29, 1868, ratified on February 16, 1869, and proclaimed on February 24, 1869. This treaty ended the hostilities, provided annuities of various kinds to the Indians, and, most important to this paper, established a permanent reservation with definite boundaries (Article 2). The boundaries set up by this treaty do not coincide exactly with those of the Fort Laramie Treaty of 1851, and this was to lead to a great deal of litigation which was brought before the Indian Claims Commission. Article 12, requiring the assent of at least three-fourths of all the adult male Indians to the cession of any of the reservation, was another item which the Sioux brought up again and again. Article 10, concerning delivery of goods in lieu of money or other annuities, was still another source of complaint on behalf of the

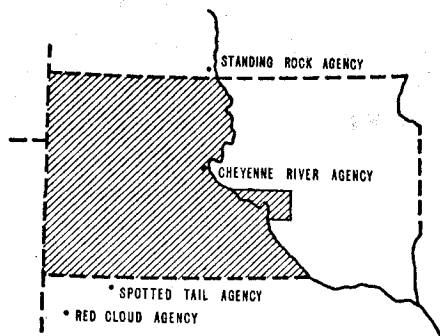
Sioux. Since the Treaty of 1868 was signed by not only the seven tribes of the Teton Sioux but the Yanktonai, Cuthead, Santee, and the Arapaho as well, it was bound to lead to overlapping claims in time to come.¹¹

The Treaty of 1868 would seem to have been a great victory for Red Cloud and the Indians in general. They had secured the closing of the Bozeman Road and the forts along its route and had received many other benefits as well. What they did not seem to notice at the time was that they had surrendered a great deal of land in the process. On the upper map on the following page, the dotted line indicates the original Sioux lands. The shaded area indicates the reservation boundary as agreed upon in the Treaty of 1868. Note that two agencies, Spotted Tail and Red Cloud, were at that time located outside the main reservation in what is now the state of Nebraska. It was by this treaty that the Sioux lands became known as "The Great Sioux Reservation."¹²

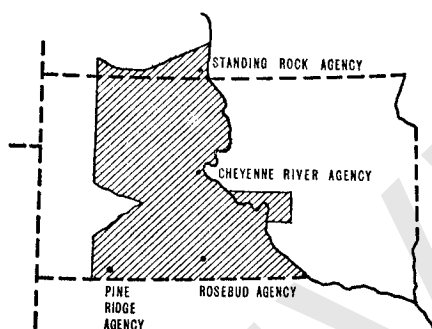
The next major agreement between the United States and the Sioux was The Agreement of 1876, which resulted in the Act of February 28, 1877. By this Act, the Black Hills area was ceded to the United States. Since this Act was the basis for a large and complicated claim by the Sioux against the United States, a review of the historical events which led up to it follows.

There is evidence that mining and trapping parties entered the Black Hills area as early as the 1830s and 1840s. During the early 1850s, prospecting parties enroute to California mined the Black Hills and recovered gold. In 1857, Lt. G. K. Warren, a topographical engineer, led a reconnaissance expedition into Sioux country. In the Black Hills area, Lt. Warren discovered gold. In his report he also noted "that the area was watered by beautiful flowing streams, and that it contained rich valleys capable of cultivation and ample timber and other building materials."¹³

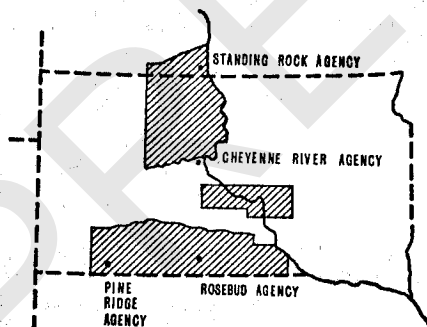
REDUCTION OF THE GREAT SIOUX RESERVATION 1868 to 1890



TREATY OF 1868



AGREEMENT OF 1876
(and Act of 1877)



ACT OF 1889

Robert M. Utley, The Last Days of the Sioux Nation. (New Haven and London: Yale University Press, 1963), p. 43. (Reproduced by permission of the publisher.)

Another military party, under the command of Brigadier General W. F. Reynolds, surveyed the portion of the subject tract between the 43rd and 45th parallels in 1859 and 1860. In his report, General Reynolds emphasized the importance of the natural resources other than gold and stated in part, ". . .The whole region of the Black Hills is unquestionably destined, at no distant date, to afford homes for a thriving population."¹⁴

During 1865, a military expedition enroute to the Powder River area passed through the northern Black Hills. Many specimens of gold-bearing quartz were discovered. In 1866, Dr. Ferdinand V. Hayden led a scientific expedition into the hills. Dr. Hayden found gold and reported that it could be found in almost every stream.¹⁵

Beginning in 1867, and continuing through 1872, various individuals and organizations formed parties with the intention of entering the Black Hills for mining activities. These plans generally were thwarted by the United States Army which at that time was intent on keeping Americans out of the Sioux reservation. In 1873, the territorial legislature of Dakota Territory petitioned Congress to move the Sioux to the eastern portion of the reservation and to open the Black Hills to white settlement.¹⁶

In May 1874, the Secretary of Interior established a commission known as the Special Sioux Commission, to negotiate with the Brule and Oglala Sioux to abandon their rights under articles 11 and 16 of the Treaty of 1868, and to confine their activities to the reservation. Although the purchase or cession of the Black Hills was not specifically mentioned in the commission's instructions, the abandonment by the Sioux of Article 16 of the Treaty of 1868 would have been tantamount to surrender of the Black Hills area. In the report of the commission, the chairman, Chris C. Cox, indicated that he was in favor of acquiring the Black Hills area either by agreement or by