

BEFORE THE INDIAN CLAIMS COMMISSION

THE LITTLE SHELL BAND OF CHIPPEWA)	
INDIANS, SOMETIMES KNOWN AS THE TURTLE)	
MOUNTAIN BAND OF CHIPPEWA INDIANS AND)	
AS THE PEMBINA BAND OF CHIPPEWA)	
INDIANS, and)	
)	
JOSEPH H. DUSSOME, HELEN THUMM, EDWARD)	
BELGARD, LUCY TURCOTTE SHARP, ELIZABETH)	Docket No. 191
SWAN, DAVE DONEY, GEORGE ST. CLAIR,)	(Second Claim)
MICHAEL THUMM, ALBERT GARDIPPE, GABRIEL)	
AZURE, MADLINE FAYANT, AND JOHN BRIEN,)	
MEMBERS AND REPRESENTATIVES OF SAID)	
BAND,)	
)	
Plaintiffs,)	
)	
and)	
)	
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S)	
RESERVATION, MONTANA, JOE CORCORAN, on)	
behalf of the CHIPPEWA CREE TRIBE,)	
BLANCHE PATENAUDE, JOSEPH RICHARD,)	Docket No. 221-B
JOSEPH GOOSELAIN, JOHN B. SLAYTER, WM.)	
JOHN DELORME, WILLIAM TROTTIER, on)	
behalf of the LITTLE SHELL BAND OF)	
INDIANS and the CHIPPEWA CREE TRIBE,)	
)	
Plaintiffs,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 5, 1974

FINDINGS OF FACT

The Commission finds the following facts:

1. The Claims

The Little Shell Band of Chippewa Indians, sometimes known as the Turtle Mountain Band of Chippewa Indians and as the Pembina Band of

Chippewa Indians, and twelve named individuals, as members and representatives of the band, are plaintiffs in Docket 191. The petition sets forth a claim based on aboriginal title of the Little Shell Band to a large area of land in North Dakota and Montana. Only the claim relating to lands in Montana is being litigated in this proceeding.

The plaintiffs in Docket 221-B are the Chippewa Cree Tribe of the Rocky Boy's Reservation and seven individuals, on behalf of the Little Shell Band and the Chippewa Cree Tribe. The claim is based on aboriginal ownership by the Chippewa Cree Tribe, and other Indians, of land in Montana.

The plaintiffs in both Dockets 191 and 221-B claim title to the same tract of land. Both groups of plaintiffs assert that they represent Little Shell's Band, and both are represented by the same attorneys. For these reasons, Docket 191, insofar as it pertains to land in Montana, and Docket 221-B were consolidated and tried jointly.

The land involved encompasses about 16 million acres in northern Montana, extending from the Missouri River on the south to the international boundary with Canada (the 49th parallel of latitude) on the north; and from the North Dakota-Montana border westward to a line running from the mouth of the Marias River northward to the Sweetgrass Hills at the international boundary.

Plaintiffs claim to be the descendants of the ancestral Cree and Chippewa Indians from whom the subject lands were taken. Plaintiffs contend that their ancestors were deprived of the western part (roughly

three-fourths) of their lands in 1856 and that they were deprived of the eastern part in 1874. That portion of the claimed lands west of a line extending from the mouth of the Milk River northward to the Canadian border was included in a tract which was established as a reservation for the Blackfeet Nation under provisions of the Treaty of October 17, 1855, which was ratified on April 15, 1856, 11 Stat. 657. That treaty was concluded between the United States and Indian tribes residing both east and west of the Rocky Mountains. The tribes west of the mountains were the Flathead Nation, consisting of the Flathead, Upper Pend d'Oreille, and Kootenay Tribes; and the Nez Perce Tribe. The tribes east of the mountains who were parties to this treaty were the Blackfeet Nation, consisting of the Piegan, Blood, Blackfeet, and Gros Ventre Tribes. Neither the Cree nor the Chippewa Tribe was a party to this treaty. However, a Cree Chief, Broken Arm, placed his mark on the treaty as a witness.

On July 5, 1873, an Executive order extended the Blackfeet Reservation eastward to the boundary of the territory of Dakota. This Executive order extension was confirmed by the Act of April 15, 1874, 18 Stat. 28.

2. Plaintiffs' Expert Witnesses

The plaintiffs' expert witness is Dr. Floyd W. Sharrock, Professor of Anthropology at the University of Montana. Dr. Sharrock appeared at the trial as a witness, and he and his wife, Susan R. Sharrock, prepared an ethnohistorical account of the Cree Indians. The study

is designated Plaintiffs' Exhibit 150. Dr. and Mrs. Sharrock conclude from their study that:

1. The Cree and Chippewa and others (specifically the Assiniboine) were in the contested area at the time the U. S. received sovereignty with the Louisiana Purchase in 1803.
2. By the mid-19th century, the Cree were the dominant power in the north central area of Montana, north of the Missouri River.
3. The treaties of 1851 and 1855 gave title of some lands controlled by the Cree to the Blackfeet with no recompense.
4. After 1860, the Cree power and uncontested territory began to diminish as the Blackfeet and Sioux power increased.
5. However, at no time did the Cree disclaim lands in Montana--even with the conclusion of treaties with the Canadian government. Nor did they ever physically leave the lands. This was true throughout the 19th and into the 20th century.

3. Defendant's Expert Witness

The defendant's expert witness is Dr. John C. Ewers, Senior Ethnologist at the Smithsonian Institution. He prepared an ethnological report on the Chippewa Cree Tribe of the Rocky Boy's Reservation and the Little Shell Band of Indians. This report is designated Defendant's Exhibit 64. Dr. Ewers concludes that several tribes of Indians occupied the land in question prior to 1856 and 1873, and that neither the Chippewa nor the Cree were among those aboriginal inhabitants. The other Indians who used and occupied the area were, in Dr. Ewers' opinion, the Blackfeet, the Gros Ventre, and the Assiniboine.

4. Cree Occupancy Prior to 1800

The Cree and Chippewa were first encountered by white missionaries, explorers, and traders in the middle 1600's. The Cree were at that time located between the upper Great Lakes and Hudson Bay.

During the 1670's the English established trading posts on Hudson Bay. After acquiring firearms and other English trade goods, the Cree extended their movement southward and westward. The Cree and the Assiniboine became allied in the late 1600's when the Assiniboine found themselves between the Sioux armed with French guns, and the Cree armed with English guns.

In 1736 Father Aulneau, a Jesuit missionary stationed on the south shore of the Lake of the Woods, reported that the Assiniboine lived on the south shore of Lake Winnipeg and that the Cree inhabited the other shores and beyond. He also recorded his plan to accompany the Assiniboine on an annual winter journey to the land of an agricultural people on the Missouri River from whom they procured corn. The Cree also traded with these corn growers on the Missouri River.

Chevalier de la Verendrye lived and worked in the area north and west of Lake Superior for nearly 20 years beginning in 1727. His purpose was to secure the fur trade for France. He indicated that in 1730 the Cree of the Prairies were west of Lake Winnipegosis, which is a short distance west of Lake Winnipeg in Canada. Also, in that year he met a band of Cree at the confluence of the Red and Assiniboine Rivers, now the site of the city of Winnipeg, Manitoba. La Verendrye met a Cree chief in 1730 who drew a map for him depicting the

Saskatchewan, the Red, and the Missouri Rivers. This chief had apparently traveled far to the west and south of Lake Winnipeg, but La Verendrye said the Cree occupied the country west of Lake Winnipegosis and north of the Winnipeg River.

Alexander McKenzie was an explorer who was acquainted with Canada and its Indian inhabitants. Writing about 1790, he described the Cree country as extending from "Lake Winipic" along the North Saskatchewan River to Fort George, thence northerly and then east to Hudson Bay. He wrote that this area was exclusively the country of the "Knistenaux" (Cree), although some of the Cree had penetrated farther south and west, as far as the Red River, to the south of Lake Winnipeg, and to the south branch of the Saskatchewan River.

David Thompson was another explorer of the Canadian plains at about the same time. He wrote that the Cree occupied territory which was north of the Great Plains, reaching the southern shore of Hudson Bay, and extending westward to the Rocky Mountains.

The area of Cree occupation as described by both of these explorers is some distance north and east of the claimed area. There is no evidence that Cree Indians used and occupied any part of the claimed area during this period.

5. Chippewa Occupancy Prior to 1800

The Chippewa were encountered by European explorers in the late 1600's around the eastern end of Lake Superior. Not until 1736 did those Indians obtain a foothold west of Lake Superior. The Northwest

Company and the Hudson's Bay Company established trading posts in 1797 and 1798 at the mouth of the Pembina River on the Red River, and this was the westernmost extension of the Chippewa in the United States during the eighteenth century. The Red River is several hundred miles east of the claimed area. The home villages of the Chippewa who traded on the Red River were far to the east.

North of the 49th parallel (in Canada) the Chippewa extended their trading farther west up the valley of the Assiniboine River. Two groups of Chippewa were located near the confluence of the Red and Assiniboine Rivers in 1800 -- one from Leech Lake and the other from Red Lake, both in Minnesota. During the last decade of the eighteenth century some of these Chippewa extended their trading as far west as the Souris River in western Manitoba, east of the Missouri Coteau. This is north and east of the claimed area.

There is no evidence that Chippewa Indians used and occupied any part of the claimed area during this period.

6. Lewis and Clark Observations

Captains Lewis and Clark ascended the Missouri River in 1805, along the south boundary of the claimed area. The map of their trip depicts "a band of Assiniboins 2000 souls" along the Milk River north of the Missouri River. This is in the middle of the claimed area. To the west the map identifies the "Blackfoot Indians 3500 souls" along the Marias River a short distance above its mouth. This is immediately west of the southwest corner of the claimed area. To the east of the Milk River, and

extending into the present state of North Dakota, the map lists a band of Assiniboine Indians (1200 souls). Another Assiniboine band of 1,000 is shown as occupying country northeast of the mouth of the White Earth River. Thus all of the land at issue in this case is depicted on the Lewis and Clark map as Assiniboine territory.

The westernmost mapping of any Chippewa Indians is in the Red River Valley on the present Minnesota-North Dakota boundary. No Cree bands are listed on the map.

In their journals, Lewis and Clark described:

A. A band of Assiniboine, the Big Devils Band, which roved between the Missouri River and the Saskatchewan River, above the Yellowstone River and the heads of the Assiniboine River.

B. A band of 2,500 Fall (Gros Ventre) Indians between the Missouri River and the Bad River, a branch of the Saskatchewan River, and

C. A band of 1,000 Cree (called "Knistanoes" or "Cristanoes") which roved on the heads of the Assiniboine River, and to the Missouri River "in the country of the Assiniboin."

Each of these descriptions includes at least part of the claimed area. However, the only reference to the Cree in the area indicates that they were in territory belonging to other Indians (Assiniboine).

Lewis and Clark did report the presence of Cree at the Mandan villages on the Missouri River some one hundred miles southeast of the subject lands. However, the cited references do not indicate any Cree use and occupancy of the areas. Rather the reports reflect that the villages

were in the country used and occupied by Mandans and that the Crees were there visiting and trading guns from the British for dried and pounded buffalo meat. Another notation of the possibility of inducing the Cree to visit an establishment on the Missouri River, at the Yellowstone River, is likewise not evidence of Cree use of lands within the area claimed in this case.

The information supplied to Lewis and Clark by Regis Loisel, an explorer for Spain, is of no value in establishing Cree aboriginal title. The Loisel report that Crees were among those "who hunt on the east bank of the Missouri River, more or less above the Yellowstone River" cannot be relied upon as evidence that the Cree hunted in the claimed area. As plaintiffs have noted, Loisel's geography was confused since his map inaccurately reflected the Missouri River as running almost north and south above the mouth of the Yellowstone River. We could only speculate as to the area which Loisel was describing. But, in any event, the Loisel report referred not only to the Crees but also to the Assiniboines, Blackfeet, Flatheads, Pawnees and an "infinity of others" as hunting on the "east bank of the Missouri River more or less above the Yellowstone River" Pl. Ex. 2; Abel, Tableau's Narrative of Loisel's Expedition to the Upper Missouri, (1939). The cited Loisel statement went on:

In short, all the rivers, which empty into the Missouri above the Yellowstone, are frequented by a swarm of Nations with whom, at the post of the Mandanes, a trade, as extensive as it is lucrative, can be carried on.

7. Cree Activities in Early 1800's

In 1800 Alexander Henry met Cree Indians at Park River, in North Dakota, south and east of the subject lands. In his 1805 visit to Gros Ventre villages on the Missouri River, Alexander MacKenzie reported that Cree, along with Assiniboine and Sauteux Indians, had visited the villages. The journals of Henry and Thompson recorded that in 1805 the Cree and Assiniboine hunted on the Souris River, north and east of the claimed area. Writing of his own experiences as a captive of the Indians, John Tanner described raids and warfare which were conducted by combined forces of the Cree, Assiniboine, and Chippewa. However, the joint efforts were in areas east and southeast of Montana. In any event the reported activities did not relate to Indian land use and occupancy.

8. Lord Selkirk's Colony

The Right Honorable Thomas Earl of Selkirk purchased from the Hudson's Bay Company a large tract of land along the Red and Assiniboine Rivers. To permit settlement of the area he entered into a treaty of cession with the Chippewa and Cree Indians on July 18, 1817. Although most of this land was in Canada, the grant extended down the Red River Valley to the mouth of the Red Lake River, or about 75 miles south of the Canadian boundary. However, it was far to the east of the Montana lands involved in this case.

In writing of the Selkirk treaty Alexander Ross stated that the Chippewa had less of a claim to the ceded lands than the Cree and that the Cree and Assiniboine Indians were the "rightful owners or inhabitants"

of this part of the country. Ross also observed that the Cree and Assiniboines on the west were among the tribes which visited the Selkirk colony.

9. Cree Trading Activities

During the 1830's members of various Indian tribes, including Cree, traded at posts in the vicinity of the claimed lands. In 1829 a trading post was established at the mouth of the Yellowstone River. This post, later to be known as Fort Union, was a few miles east of the southeast corner of the claimed area. Assiniboine, Cree, and Chippewa Indians traded there. During the 1830's the United States distributed gifts among several Indian tribes, including the Cree, in an effort to induce them to trade at Fort Union. Cree Indians also traded at Fort Williams, farther to the east, and at Fort Assiniboine, which is in the western part of the claimed area on the Milk River.

In 1832 a trading license was issued to Pierre Chouteau authorizing him to trade with Cree, Chippewa, and Indians of eight other tribes. The license was valid for a number of locations including the mouth of the Yellowstone River and the mouth of the Marias River, the latter location being at the southwest corner of the claimed area.

The many reports relating to the trading activities at various posts in northern Montana contain no references of Cree or Chippewa use and occupancy of any part of the claimed lands.

10. Reports of Indian Agents

During the 1830's and 1840's reports of the United States Indian agents referred to Cree Indians. In 1828 the Mandan subagent, John F. A. Sanford, employed a Cree interpreter. In 1830 he recommended that representatives of each tribe in his subagency be permitted to visit the President. As a result four such Indian representatives, including the Cree Chief Broken Arm, left Fort Union and visited Washington in 1832.

In 1838 Joshua Pilcher, the Upper Missouri Agent, reported that the Cree were among six tribes reassigned to his agency from the Mandan Subagency. He described the Cree as a very numerous tribe which inhabited the country north of the Saskatchewan River (in Canada), from the foot of the mountains down to the lakes, and extending over all the region north as far as Hudson's Bay. The only reference to Cree activities in the vicinity of the claimed area was his statement that a band of the Cree Tribe had been drawn over to the Missouri River and traded at Fort Union.

W. N. Fulkerson, the Mandan subagent, reported in 1837 that the Assiniboiné, Cree, and Gros Ventre of the prairie roamed over the vast plains in pursuit of game from the mouth of the Yellowstone River to Lake Winnipeg and the sources of the Mississippi River. He likewise stated that part of their trade was conducted at Fort Union, but that most of it was with the British traders on Red River.

There are no references in the reports of Indian agents which would ascribe any portion of the claimed area to the Cree or Chippewa Indians.

11. Maximilian's Travels

In 1833 Prince Maximilian visited Fort Union and continued up the Missouri River to Fort McKenzie, the American Fur Company's newly established post for the Blackfeet trade at the mouth of the Marias River. At the mouth of the White Earth River (in present North Dakota) he first encountered the Assiniboine. At Fort Union, he met both Assiniboine and Cree, including the Cree Chief, Broken Arm. Maximilian described the territory which the Assiniboine claimed as being between the Missouri and the Saskatchewan Rivers, bounded by Lake Winipeg on the north; extending on the east to the Assiniboine River; and on the west to the Milk River. Maximilian further reported that the Crees lived in the same territory as the Assiniboine, that is, between the Saskatchewan, the Assiniboine, and the Missouri Rivers.

Maximilian continued up the Missouri and noted on passing the mouth of the Milk River that it constituted the western frontier of the Assiniboine. He spent several weeks at Fort McKenzie near the mouth of the Marias River studying the Blackfeet Indians who had come to trade. The only Cree he saw there were about 100 Cree members of an Assiniboine war party of 600 men who attacked a small Piegan camp of 18 to 20 lodges on August 28, 1833.

The map accompanying Maximilian's account of his travels depicts all of present Montana north of the Missouri River and east of the mouth of the Milk River as Assiniboine country. It does not show any Cree

territory. Neither does it show any Chippewas west of the Missouri Coteau and south of the 49th parallel of latitude.

12. George Catlin's Travels

George Catlin traveled among the western Indians between 1832 and 1839. He said there were about 3,000 Crees; that they occupied the country from the mouth of the Yellowstone River in a northwestward direction far into the British provinces; and that they traded primarily at the British Northwest Company's posts. On his outline map of Indian localities in 1833, Catlin locates the Cree directly north of the claimed area along the Saskatchewan River. This map depicts no other Indians between the Crees and the Missouri River.

Catlin further stated that the Assiniboines and the Ojibwas occupied the country northeastward from the mouth of the Yellowstone River as far as Lake Winnipeg.

13. Reports on Cree Activities in 1830's

In the 1830's there were reports that the Assiniboine and Cree hunted buffalo in the Missouri River area. In 1835 Chardon reported in his Fort Clark Journal that the Cree were one of the tribes on the Missouri River. He wrote that about 300 Assiniboine and Cree were just above the mouth of the White River (southeast of the claimed area) and were on their way to attack the Gros Ventre. Lieutenant Bradley's Journal at Fort Benton, near the southwest corner of the claimed area, recorded in 1838 that sixty lodges of Gros Ventre Indians in the Sweetgrass Hills had been attacked by the combined forces of Cree and Northern Assiniboine.

14. Reports on Cree in 1840's

During the 1840's the Cree ranged from the Saskatchewan River to the Missouri River and wintered primarily in the Cypress Hills, which are in Canada north of the claimed area. In January 1844 the trader Larpenteur went to Woody Mountain, in Canada, to trade with a camp of Cree and Chippewa Indians.

In the later 1840's Rudolph Friedrich Kurz, an artist who lived among the fur traders and Indians, reported that Cree and Assiniboine traded at Fort Williams (just east of the claimed area), and that Assiniboine, Crow, Cree and half-breeds traded at Fort Union. He related an incident when a Cree chief, La Plumet Caille, while rowing across a river, faced northward and with his hand described a semicircle from the point of sunrise to that of the sunset as he said "Tout ca a moi" (all that is mine). He repeated these words several times in the presence of Assiniboine Indians who, Mr. Kurz observed, might have understood his signs.

Father Jean-Pierre DeSmet, who traveled among the Cree in the late 1840's, reported from Mountain House on the North Saskatchewan River that the Cree Nation was very large and powerful, numbering more than 600 wigwams, and that they constantly encroached upon the territory of their adversaries. He described them as one of the most formidable enemies of the Blackfeet, and reported that at one time 800 of their warriors had gathered to attack the Blackfeet. Father DeSmet described the Cree as ranging from the Rocky Mountains on the west to some distance beyond the Red River on the east, but he limited their north-south range to

the lands between the two branches of the Saskatchewan River. They were thus a considerable distance north of the claimed area.

15. Reports on Cree in 1850's

In 1851 William S. Hatton, the Indian subagent in charge of the Upper Missouri Subagency, reported that the Cree and six other tribes were included in his subagency.

Alfred J. Vaughan, Indian Agent, arrived at Fort William at the mouth of the Yellowstone in July 1854 with a load of goods for distribution. In response to runners he had sent out to the various camps in the area, about 30 lodges of Cree came in to the fort in company with about 80 lodges of Assiniboinés. Writing at Fort Union, Vaughan reported:

They [the Crees] are now the most numerous and inveterate enemies of the Blackfeet, with whom the government are anxious to conclude a treaty of peace; which, as far as regards the Indians of this district, cannot be of long duration if the Crees are excluded, because the geographical position the latter occupy is such as to bring them into constant collision with the Blackfeet, who inhabit the same region. They (the Crees) are very numerous good warriors, peaceably disposed towards whites, and come within the American boundary. [Emphasis added.] [Pl. Ex. 123, p. 295]

Vaughan continued to recommend establishing two agencies on the upper Missouri, "one at Fort Pierre and the other at Fort Union," suggesting that six bands, including the Crees, come within the jurisdiction of the agent at Fort Union. The same report also listed the following tribes as residing on the upper Missouri River:

Assiniboine	3,360
Arickarees	800
Blackfeet	7,500

Crows	3,360
Gros Ventres	750
Mandans	250
Minatares	2,500

Isaac I. Stevens reported to the Commissioner of Indian Affairs on September 16, 1854, concerning the Indians on his route of exploration from the head of navigation of the Mississippi River to the Pacific Ocean. He stated that the Indians on his route east of the Rocky Mountains were the Chippewa, Winnebago, Sioux, Assiniboiné, Cree, Gros Ventre, Blood, Piegan, Blackfeet, and Crow. However, he did not delineate the territory occupied by any of these tribes.

Edwin Thompson Denig had been a trader at Fort Union near the mouth of the Yellowstone for 18 years when, in 1855, he prepared a report for Governor Stevens on the Cree Tribe. He said the Cree boundary on the north and northeast was the Saskatchewan and Red Rivers; on the south and east it was the Pembina River; thence west to the Coteau de Prairie and along the coteau through Woody, Cypress, Tinder, Moose, and Prickly Pear Mountains to or nearly to the head of the Saskatchewan; thence down that river to Lake Winnipeg; and around that lake to its eastern extremity. None of this territory is in the claimed area.

16. The Treaty Council of 1855

In May 1855 George W. Manypenny, Commissioner, Office of Indian Affairs, instructed Messrs. Alfred Cumming, Isaac J. Stevens, and Joel Palmer to hold a treaty council with the Blackfeet and other Indian tribes residing in the vicinity of the headwaters of the Missouri River.

The treaty was to establish well defined and permanent relations of amity with all the most numerous and warlike tribes in that remote region of country, both between the Indians and the United States, and between the tribes themselves.

While there is no evidence of any attempt to treat with the Cree, Commissioner Stevens, at the treaty council at the mouth of the Judith River, stated that the United States also wanted peace with the Assiniboine and the Cree. After reciting the names of the tribes represented at the council, he added:

And we have the Cree sitting down here from the
North and East 1/ [Pl. Ex. 96 at 199]

Commissioner Stevens, in explaining the treaty to the Blackfeet, stated:

A story was told among you that your country was to
be taken away from you and that you were to be driven
North to the Saskatchewan among the Crees and the
Assiniboines. [Pl. Ex. 96 at 201]

The Commissioner categorized this story as a lie, and told the Blackfeet that the Great Father wanted to establish them in their own country on farms.

1/ In a footnote to this statement the editor of the report on the treaty council wrote, "This was Broken Arm, a chief of the Cree Indians from the north, whose residence appears to have been in the region of Wooden Mountains. His name appears on the official treaty as a witness." Partoll, A. J. The Blackfoot Indian Peace Council. In Frontier Omnibus, John W. Hakola, ed., Pl. Ex. 96, p. 199. The Wood Mountains are in Canada, north of the claimed area.

Broken Arm, the Cree chief who was present at the treaty council of 1855, signed the treaty as a witness and not as a party. The evidence indicates that he concurred in and approved the provisions of the treaty. There is no evidence of any dissent on his part.

17. Reports on Cree after 1855 Treaty

The 1855 treaty did not end the conflicts between the Indians. In 1856 the Indian agent at the Blackfeet Agency reported that the Blackfeet had few horses because of raids by the Cree and Assiniboines of the North. Indian agent A. H. Redfield reported in 1859 from Fort Union that there were Crow and Cree Indians at the fort. The Crow, he stated, considered Fort Union to be in Assiniboine country. He reported that during the past two years the Indians had almost entirely disregarded their treaty obligations, and he recommended a military post be established at or near Fort Clark, on the Missouri River, for the purpose of keeping the Sioux in order and to protect the weaker nations, the Arikaras, Gros Ventres, and Mandans. He also urged that a new treaty be made with all the Indians including the Cree who lived on the United States side of the international boundary. In 1860 Subagent Owen reported a defeat and loss of horses sustained by the Pends d'Oreilles at the hands of an Assiniboine and Cree war party.

In 1864, Mr. M. Wilkinson, Indian agent at Yankton, Dakota Territory, reported that the Arikara claimed land south of the Missouri River, as did the Assiniboine and the Gros Ventre. He further reported that an Arikara chief listed the Cree as their neighbors, along with the Dakota

Sioux, Chippewa, Assiniboine, Crow, and Blackfeet. Mr. Wilkinson did not give the location of those Cree who were in the area of the Arikara village.

18. F. V. Hayden Description of the Cree

Mr. F. V. Hayden was a scholar who worked with the Smithsonian Institution and who traveled extensively among the Plains Indians in the 1850's. He estimated the entire Cree population at between 4 and 5 thousand persons. Mr. Hayden reported that in 1776 or 1777 a small pox epidemic had taken the lives of about one-half of the Cree population. After that time, in his estimation, the tribe had been increasing. He reported that in 1760 the Crees had been found along the Red River and the lower end of Lake Winnipeg. In 1856 he described their land as bounded on the north and northwest by the Red and Saskatchewan Rivers; on the south and east by the Pembina River; thence west to the Coteau de Prairie (Missouri Coteau); thence along the Coteau through Woody, Cypress, Tinder, and Prickly Pear Mountains nearly to the bank of the Saskatchewan; and thence to Lake Winnipeg and the Red River. This describes lands outside the claimed area. Mr. Hayden said this was the country the Cree claimed as their own, although they were frequently found west of this area on hunting expeditions in the land of the Assiniboine, especially when buffalo were not numerous in their own district. He said that most of their trade was with the Hudson's Bay Company in their own territory, although occasionally they sold their robes to traders on the Missouri River.

19. Report of Alfred J. Vaughan

Alfred J. Vaughan, Indian Agent at Fort Benton on the Missouri River a few miles above the mouth of the Marias River, described the boundaries of the Blackfeet country in a letter of September 10, 1858, to Col. A. M. Robinson, Superintendent of Indian Affairs, St. Louis, Missouri. He said the Blackfeet country was generally conceded to be bounded by a line beginning on the north where the 50th parallel crosses the Rocky Mountains; east on that parallel to the 106th meridian,^{2/} south to the headwaters of the Milk River; down that river to the Missouri; up that river to the mouth of the Judith; up that river to its source; then north along the base of the Rocky Mountains to the point of beginning.

Mr. Vaughan wrote that the Blackfeet and Blood Indians were north of the sources of the Marias and Milk Rivers. The Piegans were between the Milk and Marias Rivers; upon the Marias and Teton Rivers; and between the Teton and the Missouri River. The Gros Ventre occupied the land bordering the Milk River from its mouth to the land of the Piegans. Thus, all land from the mouth of the Milk River to the Rocky Mountains was considered Blackfeet or Gros Ventre country. This includes most, if not all, of that portion of the claimed area which was the subject of the Treaty of October 17, 1855.

^{2/} The 106th meridian of west longitude is about 15 miles east of the mouth of the Milk River; it is several hundred miles east of the headwaters of that river.

20. Report of Captain John Palliser

Captain John Palliser explored the interior of British North America during the years from 1857 to 1860. He covered the area between the American-Canadian boundary and the Arctic Ocean watershed, and between Lake Superior and the Pacific Ocean. In a report presented to the Parliament in 1863, he distinguished the Plains Cree from the Thickwood Cree north of the Saskatchewan River. The Plains Cree, he said, sometimes pitched their tents as far west as the elbow of the South Saskatchewan River in the latitude of Fort Ellice (about 50° N. Lat.). From that point their country was bounded by a line carried to the Neutral Hills, south of Battle River, and thence to the Beaver Hills and Fort Edmonton. He described their favorite summer camping grounds as along the Qu'Appelle River to the Missouri Coteau, where they bordered on the Sioux and Assiniboine. The Cree were also found in the Bad and Eagle Hills between the two branches of the Saskatchewan, and also along the Battle River southeast of the Beaver Hills. In the latter places, they were asserted to be in contact with the Blackfeet, with whom they were frequently at war. In the winter the buffalo moved north seeking shelter in the partially wooded country, and the Cree then tented near the North Saskatchewan and toward the Touchwood Hills and Fort Carlton. All of this country described by Captain Palliser is north of the international boundary.

21. Report of Indian Agent Upson

In 1864 United States Indian Agent G. E. Upson forwarded a report from Fort Union that the entire Cree Nation was encamped at the Park or Wood, 60 miles from Fort Union. He reported that they were preparing to

fight the Gros Ventres in the spring. Unfortunately, Agent Upson did not identify the location of "the Park or Wood." We only know that it was 60 miles from Fort Union, which is a few miles east of the southeast corner of the claimed area.

22. Canadian Reports

During the latter part of the nineteenth century there were a number of Canadian reports dealing with Cree and Chippewa Indians. Reports from the Canadian Fort Walsh, in the Cypress Hills about 50 miles north of the claimed area, indicated that in 1881 the Cree chief, Big Bear, was south of the international boundary with 480 lodges of Cree and Crowfoot. Another 1881 report listed a big Cree camp on Rock Creek, which is in the claimed area south of Wood Mountain. Other 1880 reports from Fort Walsh indicated that large numbers of Cree were south of the international boundary and camped along both banks of the Missouri River.

During the 1870's Canadian officials negotiated seven treaties with the Indians of Manitoba and the Northwest Territories. These included treaties with the Cree and Chippewa. In September 1876 Treaty No. 6 was negotiated with the Plains and Wood Cree Tribes. By that treaty the Indians ceded all their land within the Dominion of Canada, and decided to settle on reserves. However, Chief Big Bear, who had the largest following of any chief on the Canadian plains, did not sign the treaty. Finally in 1882, after the disappearance of the northern herd of buffalo, Big Bear signed his adhesion to the treaty.

23. Testimony of Indian Witnesses

At the trial held April 2, 1970, in Washington, D. C., three Indian witnesses testified in behalf of the plaintiffs. Mr. William Morsette, a member of the Chippewa-Cree Tribe, testified that he had heard his grandfather say that Broken Arm was a well respected chief of the Crees, and that the Crees had owned the land north of the Missouri River from somewhere east of the North Dakota boundary on the east to the Sweetgrass Hills on the west.

Mr. Walter Denny, a Cree living on the Rocky Boy's Reservation at Box Elder, Montana, testified that as a boy he had heard the old-timers relate stories. They always mentioned that the Missouri River was theirs and that it was apparently the southern boundary of their hunting grounds. He also said he and all other members of his group were descended from Broken Arm.

Mr. John Windy Boy, a Cree born on the Rocky Boy's Reservation, also testified for plaintiffs and affirmed generally the testimony of the other two Indian witnesses.

24. Conclusions of Dr. David G. Mandelbaum

Dr. David G. Mandelbaum is an eminent anthropologist and authority on the Plains Cree Indians. In 1941 he published his study of this tribe^{3/} and both the plaintiffs and defendant have submitted portions of this work as exhibits and have relied in part upon his conclusions.

A map prepared by Dr. Mandelbaum is included in this study, and it depicts the range of the Plains Cree as of the 1860 to 1870 period.

^{3/} Mandelbaum, The Plains Cree, Anthropological Papers of the American Museum of Natural History, Vol. 37, New York, 1941.

The entire area that he shows as Cree is in Canada, extending southward as far as Wood Mountain, which is about 20 miles north of the international boundary and of the claimed area. A note relates that some bands followed the disappearing buffalo herds into Montana and scattered groups fled to the United States following the Riel Rebellion [1885]. Some of the area which he showed as being occupied by the Plains Cree, namely the southernmost portion, he described as being shared with Assiniboines. This map further depicts Assiniboines located immediately north of the international boundary, and between the claimed area and the southernmost part of the Cree territory which is noted to be Cree-Assiniboine. Dr. Mandelbaum wrote that the Cree were recent arrivals in the prairie country, coming in as invaders from the north and east.


Dr. Mandelbaum described the Cree tribal lands just before the disappearance of the buffalo as extending across the present provinces of Saskatchewan and Alberta from the region where the Qu'Appelle River crosses the Manitoba line to the vicinity of Edmonton. He determined that the various bands of Plains Cree centered in the river basins included in this area and the tribal range may be defined in terms of the valleys of the Qu'Appelle, the lower North Saskatchewan, the lower South Saskatchewan, and the lower Battle Rivers.^{4/}

Dr. Mandelbaum concluded that from 1740 to 1820 the Cree were expanding to their widest limits. He found that the influx of white hunters and settlers put an end to their aboriginal existence.

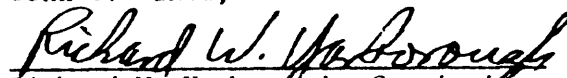
^{4/} Pl. Ex. 75 at 165.

25. Conclusion

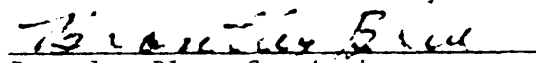
Based on the evidence in this case the Commission concludes that neither the Cree nor the Chippewa Indians nor any band or group of Cree or Chippewa Indians ever exclusively used or occupied any portion of the claimed area.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner