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## Letter from Charles West Providing a Report on US House Resolution 203, May 25, 1937

Charles West

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THE SECRETARY OF THE INTERIOR

WASHINGTON

MAY 25 1937

Hon. Will Rogers,  
Chairman, Committee on Indian Affairs,  
House of Representatives.

My dear Mr. Chairman:

Further reference is made to your request for a report on H. R. 303, for the relief of the Indians of the Fort Berthold Reservation in North Dakota.

The Act of February 11, 1920 (41 Stat. L., 404), conferred jurisdiction upon the Court of Claims to hear, determine and adjudicate the claims of the Fort Berthold Indians, a confederated tribe consisting of the Arickaree, Gros Ventre and Mandan tribes, parties to the treaty of September 17, 1851 (11 Stat. L., 749), commonly referred to as the Fort Laramie Treaty.

The Court of Claims (71 Ct. Cls., 308) awarded a judgment in the amount of \$4,923,093.47 from which gratuities aggregating \$2,753,924.89 were offset, leaving a net judgment of \$2,169,168.58. Included in the offsets was an amount of \$400,000 claimed by the Indians to have been appropriated pursuant to the provisions of an unratified treaty of July 27, 1866 (2 Kappler 1059), and erroneously allowed as a gratuity offset by the Court. This bill, if enacted, will authorize the payment to the Fort Berthold Indians of the amount claimed to have been erroneously allowed as a gratuity offset.

Article V of the Fort Laramie treaty of 1851 established the reservation boundaries of the various groups who were parties to the treaty. The territory set aside for the Gros Ventre, Mandan and Arickaree tribes, or nations, was described as

Commencing at the mouth of Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to the mouth of Powder River in a southeasterly direction, to the head-waters of the Little Missouri River; thence along the Black Hills to the head of Heart River, and thence down Heart River to the place of beginning.

*Copy for Committee*

The area involved was approximately 13,000,000 acres. The last paragraph of the same article, however, provides that

It is, however, understood that, in making this recognition and acknowledgment, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands, \* \* \*

The Court of Claims established the following facts -

	<u>Acres</u>
Original area of reservation . . . . .	13,000,000.00
Area subsequently withdrawn from reservation . . . . .	<u>11,424,512.76</u>
Area of delimited area of reservation . . . . .	1,575,487.24
Subsequent additions, Executive Orders of	
1870; 1880; 1892 . . . . .	<u>1,572,325.83</u>
Recognized area of reservation (net). . . . .	<u>3,153,818.07</u>
Area for which Indians had not been compensated . . . . .	<u>9,846,186.93</u>
Original area of reservation . . . . .	<u>13,000,000.00</u>

The Court thereupon awarded a judgment for compensation for 9,846,186.93 acres at fifty cents an acre, or \$4,923,093.47, the exact amount of the gross judgment.

The attorneys for the Indian claimants did not inject into the suit a claim for compensation for an area not described in the fifth article of the Fort Laramie treaty, but lying north and east of the Missouri River and more particularly described in an addenda to an unratified treaty of 1866, and hereafter quoted. This question was brought into the case only after the defendant had pleaded as a gratuity offset the \$400,000 the Indians believed they had received for the cession of the land in question. The Indians base their claim to this area upon the last paragraph of Article V of the 1851 treaty whereby they did not "abandon or prejudice any rights or claims they may have to other lands."

The treaty of July 27, 1866, as to the Arickarees, granted to the United States the right

To lay out and construct roads, highways, and telegraphs through their country,

and Article VII stipulated a consideration of \$10,000 a year for 20 years "after the ratification of this treaty by the President and Senate of the United States."

The addenda to this document purports to convey to the United



States all of the right and title held by the Indians in and to a certain tract of land on the northeast side of the Missouri River, more particularly described as

Beginning on the Missouri River at the mouth of the Snake River, about thirty miles below Fort Berthold; thence up Snake River and in a northeast direction twenty-five miles; thence southwardly parallel to the Missouri River to a point opposite and twenty-five miles east of old Ft. Clarke; thence west to a point on the Missouri River opposite to old Ft. Clarke; thence up the Missouri River to the place of beginning.

In consideration of this proposed cession Article II of the addenda stipulates that

In addition to the payments by the United States of annuities there named to the Arickarees, there shall be paid five thousand dollars to the Gros Ventres, and five thousand dollars to the Mandans, annually, in goods, at the discretion of the President.

The tract of land in the proposed cession has been estimated to be approximately 40 by 25 miles, embracing an area of approximately 640,000 acres, and Royce's Land Cessions indicate that at least one Mandan village was at one time located thereon. For the information of the Committee there is enclosed a photostat copy of a map found in Royce's Land Cessions.

The treaty of 1866 was negotiated by a treaty commission appointed by the President. A full report of the work of the commission is found in the report of the Commissioner of Indian Affairs, for the year 1866, beginning on page 168. In explaining its work in part, the commission reports (page 172) that

We obtained from the Indians - the Arickarees, Mandans, Gros Ventres, Assinaboines, and Crows - not only a right of way through their possessions, but also cessions of land at such points as seemed to us especially necessary for settlement and cultivation. The cession from the Arickarees, Mandans, and Gros Ventres, who inhabit the country about Fort Berthold, ceded the country on the east side of the Missouri, from old Fort Clarke to Snake creek or river, being about forty miles long and twenty-five miles wide \* \* \*



There is a good showing of coal on this land, the quality of which seems very uncertain, but if at all capable of being made available as fuel, will be of great value to commerce in a country where wood is extremely scarce. \* \* \* The soil, coal or lignite, and timber, united with the exorbitant prices paid for everything in that region, will probably invite settlements on this natural junction of commercial lines, so as to accommodate them, and ultimately advance the development of the northwest prairies.

An examination of treaties with other tribes, and of claims asserted by other tribes against the United States fails to disclose that the area embraced in the 1866 treaty was relinquished or specifically claimed by any other group. The records of the General Land Office show that the area was disposed of as public domain. It follows, therefore, that the United States proceeded to avail itself of the benefits it received from the treaty, notwithstanding the fact that the treaty was never ratified.

Following the negotiation of the treaty Congress appropriated, over a period of 20 years, a sum aggregating approximately \$1,349,000, a vastly larger amount than specified in the treaty. Claim is not here made for this larger appropriation, but only for the \$400,000 charged as a gratuity offset and representing twenty annual installments of \$20,000 each in fulfillment of the stipulations of the unratified treaty.

The Act of May 15, 1896 (24 Stat. L., 44) authorized the Secretary of the Interior to negotiate with the various bands or tribes of Indians at Fort Berthold for a reduction of their reservation or for removal therefrom to other reservations. The negotiations so authorized resulted in an agreement dated December 14, 1886 and ratified by Congress on March 3, 1891 (26 Stat. L., 1032). It will be noted that this agreement followed immediately upon the expiration of the 20 year period established by the unratified treaty of 1866. The new agreement was not effective until the passage of the 1891 act. In the intervening years, however, Congress continued to appropriate funds for the benefit of the Fort Berthold Indians. Appropriations were made subsequent to 1891 in complete liquidation of the obligations assumed by the United States in the agreement of December 14, 1886.

The Indians find no fault with the judgment of the Court of Claims, except as to the \$400,000 claimed to have been erroneously allowed as an offset. To summarize,

(a) The Indians, by the 1851 treaty, protected their claim to other land not specifically described in the treaty.

(b) The Indians, in good faith, and after negotiations with treaty commissioners appointed by the President, attempted to convey to the United States, by the treaty of 1866, complete title to a tract of land about 40 miles long and 25 miles wide.

(c) For unknown reasons, the 1866 treaty was never submitted for ratification.

(d) In their suit, the Indians did not assert a claim for the land north and east of the Missouri River, because no legal or equitable questions were involved, and further because of the belief that the treaty obligation had been recognized by the United States, and that they had received compensation from the United States through annual appropriations over a period of years, not only for the amount of the treaty stipulation, but in excess thereof.

(e) The Indians contend that when the Court of Claims permitted the \$400,000 to be pleaded as a gratuity offset, they were in effect denied compensation for property claimed by them subsequently ceded to the United States, and later disposed of by the United States as public domain.

Because of the failure to ratify the treaty of 1866, the Fort Berthold Indians have no legal claim.

This bill is identical in purpose with S. 642, but its style and wording are not similar. For uniformity, if the bill is to receive favorable consideration, I suggest that the preamble be stricken out, and that all of H. R. 203, after the enacting clause on page 2, be eliminated and that there be substituted in lieu thereof the following:

That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$400,000 in full and final settlement of all claims and demands of the Indians of the Fort Berthold Indian Reservation in North Dakota, composed of the Arickaree, Gros Ventres, and Mandans, which claims are based upon stipulations of an unratified treaty dated July 27, 1866 (Kappler's Laws and Treaties, vol. 2, P. 1032):



Provided, That the amount when appropriated shall be deposited in the Treasury of the United States to the credit of the Indians of the Fort Berthold Reservation and shall draw interest in accordance with existing laws: Provided further, That not to exceed 10 per centum of the amount herein authorized may be used by the Secretary of the Interior for payment of fees and expenses of attorneys employed under contract approved in accordance with existing law.

The Acting Director of the Bureau of the Budget has advised, however, in connection with S. 542 "that the proposed legislation would not be in accord with the program of the President."

Sincerely yours,

(Sgd.) CHARLES WEST

Acting Secretary of the Interior