

## Executive Order of 1880

In 1864, when the Northern Pacific Railroad was chartered, it was granted right-of-way forty miles on either side of the proposed line. This right-of-way went through the lands of the Mandan, Hidatsa and Sahnish (Arikara). Construction of the railroad reached their lands in 1879. The Railroad Company drew up a resolution asking for a reduction of the reservation. This proposal brought the railroad outside the boundaries of the land grant. When asked about the tribes' use of the territory, a Lt. Colonel Dan Huston, commanding officer at Ft. Stevenson, asserted that the land in question was the territorial hunting grounds of the Mandan, Hidatsa, and Arikara. However, the response was made by a Colonel Nelson A. Miles, stationed at Fort Stevenson, who reported that the tribes did not occupy, nor require the use of the land, and "never had." The land he said had been reserved for the benefit of the fur traders. (Meyers, p. 113.)

Brigadier General Alfred H. Terry, endorsed the railroad company's request, ignored Huston's letter, and favored revoking the 1870 Executive Order. The Indian Bureau, represented by Commissioner Roland E. Trowbridge, who came late to the negotiations, wrote to a special agent: "In my judgment, any alterations or change in the present reservation would greatly militate against the interests of the Indian. He went on, "the land west of the Missouri was better for farming and had more timber, he said, so giving the Indians additional land east of the river; would not compensate them for the loss." (Trowbridge to Gardner, April 5, 1880, NARS, RG 75, LS: Kappler, Indian Affairs, vol. 5, p. 745-63) in Meyer, p. 113)

On July 13, 1880, an Executive Order was issued, depriving the Mandan, Hidatsa and Arikara of the greater part of their lands. Everything south of a line forty miles north of the Northern Pacific right-of-way was ceded. This involuntary cession also included an extensive tract of land south and west of Fort Buford. The tribes were not consulted when the Executive Order was drawn up. As compensation, the tribes were granted a parcel of land north of the Missouri River, extending to within thirty-five miles of the Canadian border. This action, viewed as bad faith on the part of the government, did not pacify the tree tribes injured and angry feelings. The land to the north offered in compensation to the tribes was rough and undesirable. The Government believed that because the tribes were confined to an area near their villages, fearful of raids by the Sioux, and the buffalo nearly depleted, they were unable to use the land as they previously had. However, the land had legendary and historic connections for them. This land included their villages on the Knife River, and those villages below on the Missouri River. Within twenty-five years, the Government reduced more than twelve million acres of their territory to one-tenth of its original size.

(Meyer, p. 113).

Like most Indian claims cases, those pursued by the Mandan, Hidatsa and Arikara had a long and tangled history. They had never reconciled themselves to the loss of territory resulting from the executive orders of 1870 and 1880 for which they had not been compensated. The reductions suffered by the reservation amounted to roughly 90 percent of what the Mandan, Hidatsa and Arikara had been acknowledged to own at the time of the 1851 Fort Laramie Treaty. The treaty specifically noted that recognition of these claims and did not imply that the Indian signatories should "abandon or prejudice any rights or claims they (might) have to other lands. "

The precedent set by the 1880 agreement, together with the history of Indian treaties generally, led the Mandan, Hidatsa and Arikara to believe that they ought to have been compensated for these reductions. (Meyer, 1977, p. 186).

In 1898, the Mandan, Hidatsa and Arikara submitted a petition to the President of the United States asking permission to send a delegation to Washington to present their claims. When nothing came from this effort, they tried again in 1911, reminding Washington of the tribes' history of government relations. A delegation was allowed to come to Washington about a year later. This was to discuss the by the different interpretations of the terms of the agreement drawn upon 1909 for the opening of the reservation. They were told to get an attorney to pursue their case. Another delegation was sent three years later. The only subject the government would discuss with them was the distribution of proceeds from the land sales following the recent opening of the reservation. Besides the land seizures under the Executive Orders of 1870 and 1880, the tribes now wanted to take up the disposition of the Fort Stevenson military reservation.

When the school at Fort Stevenson was closed in 1894, 45,585.75 acres was transferred to the Interior Department. It was sold a few years later for \$71,000. The proceeds were placed in the United States Treasury instead of being used for the benefit of the tribes. According to Congress, since Fort Stevenson was established before Fort Berthold, the tribes had no rights to the land. (Meyer, 1977, p.187).

In 1920, Congress passed legislation conferring to the Court of Claims jurisdiction in the determination of the three tribes' dispute with the government.

This act stipulated that a suit must be filed within five years and the attorney's fees should not be more than ten percent of the amount to recover. The first Lawyer Tribes hired, a Mr. Lovell from Fargo, did nothing but file a petition with the Court of Claims on December 30, 1922. This claim was dismissed on December 17, 1923 and Lovell's contract was cancelled.

Charles Kappler and Charles H. Merillat, were hired by the Mandan, Hidatsa and Arikara in 1924. They filed a formal petition with the Count of Claims on July 31 of that year. The evidence, both documentary and traditional, prepared by these two men, brought about a court settlement. Because of the impossibility of determining the precise acreage of the territory recognized as belonging to the three tribes in 1851, the court settled on a round figure of 13,000,000 acres, from which 11,424,512.76 acres had been withdrawn without compensation, mainly by executive orders in 1870 and 1880. From this area were deducted 1,578,325.83 acres added to the reservation by these executive orders and that of 1892, leaving a total of 9,846.93 acres, for which the three tribes were to be compensated at a rate of fifty cents per acre. From the sum of \$4,923,093.47, however, congress deducted \$2,753,924.89 in offsets-money appropriated down through the years and expended for the "support and civilization" of the Fort Berthold Indians. When the claim was finally settled on December 1, 1930, the Mandan, Hidatsa and Arikara were awarded \$2,169,168.58 or \$1,191.50 per capita. (Meyer, 1977. pp. 187-88).