



THE LEGAL AND POLITICAL HISTORY OF COLORADO TRIBES



A report by People of the Sacred Land's Truth, Restoration,
and Education Commission (TREC) of Colorado

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*An Introduction to the
TREC Reports*

Introduction

Evolving over centuries and millennia of interactions with the natural world, Indigenous people¹ had a deep connection with the land, air, climate, plants, and animals in the places they called home across many generations. Their spiritual and psychological perspectives were strongly influenced by their close connection to the Earth, seeing it as a living entity. This belief led them to recognize their duties towards the land and all living beings, similar to their obligations to one another. In the Indigenous worldview, there is no distinction between spirit and matter; they are interconnected as a single entity. This connection to their ancestral lands cannot be underestimated and is irreplaceable.

The most egregious injustice inflicted upon Indigenous peoples in the present-day United States was the dispossession of their traditional territories, often through forced and/or violent removals sanctioned by legal means. These unjust acts which were pervasive in locations such as Colorado were aimed at advancing white settlement through the deliberate and systematic dismantling of Native communities and severing their ties to their traditional homelands.

For the past seven generations, Colorado, with support from the federal government, has systematically undermined Tribal sovereignty and Native self-governance through tactics like genocide and illegal land dispossession to exploit the wealth and resources of Tribal Nations. Colorado has also propagated distorted historical narratives through its education systems and other means to obscure the systemic injustices suffered by Indigenous peoples, safeguarding the state's economic and political interests. This has resulted in a system that fosters a culture that prioritizes Western ideals of economic gain over the well-being of Colorado's diverse ecosystems and the descendants of its original inhabitants.

We aim to restore the status of Tribal Nations in present-day Colorado, and to create a place where Native communities in Colorado can thrive and prosper. People of the Sacred Land (PSL) is a Colorado 501(c)(3) nonprofit organization that has worked collectively for the last two years as the Truth, Restoration, and Education Commission (TREC) for American Indians. The TREC is a privately funded, Native-organized, Native-led, community-driven research initiative comprised of seven American Indian leaders who represent the Tribal Nations in Colorado that have sustained the most significant injury over the last 170+ years.

The state of Colorado, through the Colorado Commission on Indian Affairs (CCIA), identifies forty-eight Tribal Nations as having ancestral lands within the state's borders¹. Over the course of the colonization of present-day United States and Mexico, the Indigenous Tribes residing within the region experienced significant demographic and geographic changes.

The TREC acknowledges the significant historical presence of the many Tribes, however, the Commission took a more legally rigorous approach in identifying the Tribes prioritized in the truth and restoration efforts of the TREC. Three specific legal criteria were utilized to define these Tribes:

1) Aboriginal title, also known as original or Indian title, is a distinct form of property right held by Indigenous peoples due to their extended occupation of the land. Indigenous communities maintain aboriginal title through their initial and continuous use of the land, a legal concept first recognized by the United States based on common law.

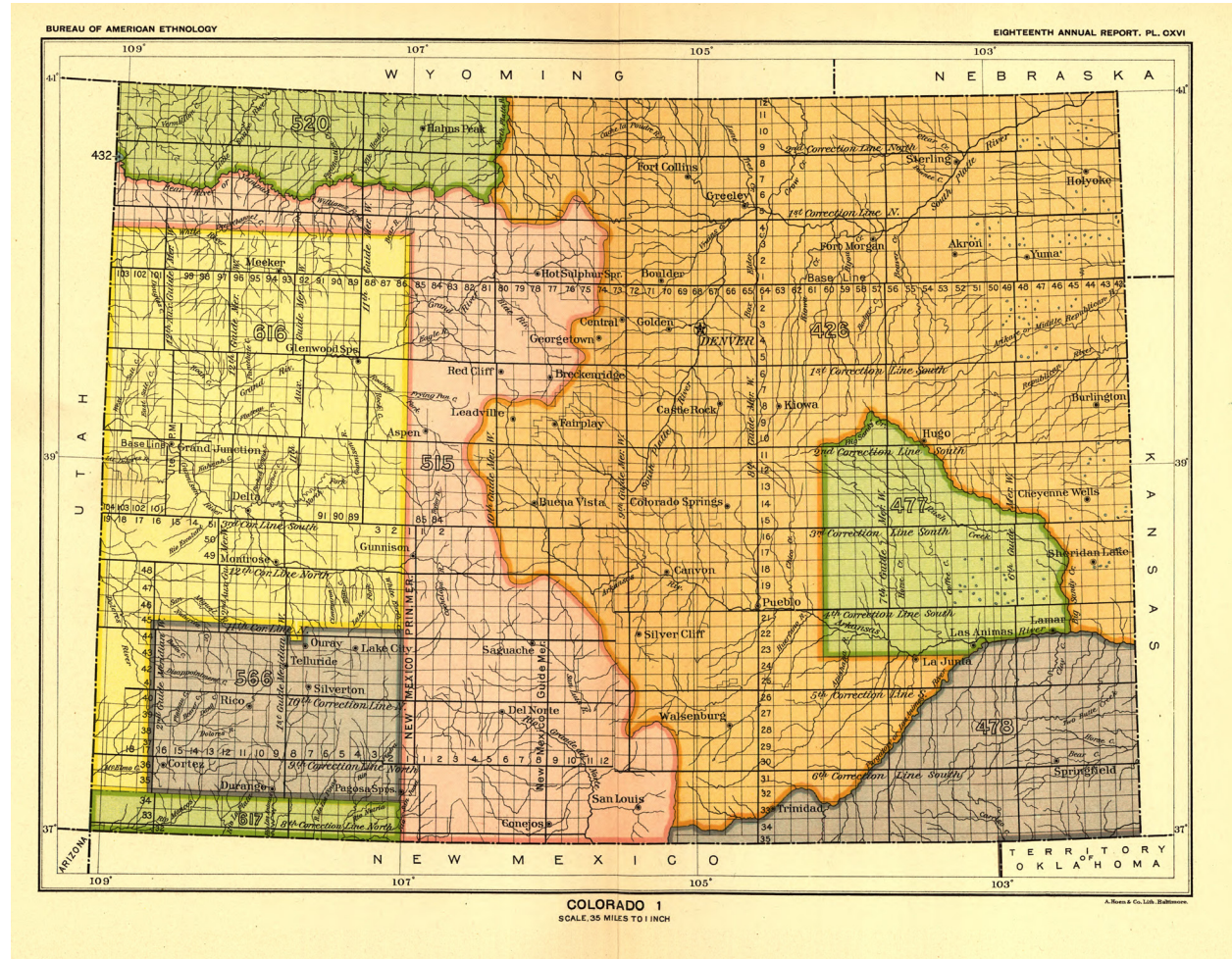
2) Congressional title, or reserved title, indicates that Congress has enacted legislation acknowledging the title of the land as Indian Country, as seen in the Indian Trade and non-Intercourse Act of 1834, Article 1.

3) Treaty title within Colorado denotes tribes that signed treaties with the US concerning land located in what is now Colorado. These treaties acknowledge the rights and privileges of both parties, with Tribes often ceding ownership of certain lands to the US in exchange for protection, services, and sometimes compensation, while retaining specific lands (reservations) and rights for themselves and their descendants.

There are ten federally recognized Tribes that meet all three of these criteria: Southern Ute, Ute Mountain Ute, Ute Indian Tribe of Utah, Kiowa, Comanche, Apache of Oklahoma, Eastern Shoshone, Northern Cheyenne, Northern Arapaho, and the Cheyenne & Arapaho of Oklahoma (*see map of ceded treaty land in Colorado on page 9*).

The TREC conducted a historical analysis of these ten² Nations, with a focus on exploring the distinctive legal and political histories inherent to each. The utilization of "Royce Maps", which document Native land cessions in the 19th century, served as a valuable tool for identifying the Tribal Nations involved in land cessions and the underlying circumstances that precipitated such events.

For every Nation, an assessment was made of the political and legal history of the Tribe, including reports from the Indian Claims Commission (ICC), to gain insight into the reasons for removal or dispossession. The findings shed light on the unjust and discriminatory treatment of Tribal Nations, extending into the 1960s. Despite land being a central issue in every claim, not a single acre was returned to the possession of Tribal Nations. This disparity highlights a systemic discriminatory practice in a legal system where in other cases of land disputes, possession was typically restored, except in cases involving American Indians.



Royce Map showing ceded Indian Lands in Colorado 1896.

The TREC report presents a thorough assessment of the financial harm inflicted as a result of displacement, warfare, deceitful activities, such as collusion, conflicts of interest, larceny, and other unlawful behaviors carried out by the state of Colorado, its citizens, and federal authorities. The TREC findings detail the mechanisms through which the genocide unfolded and identify the individuals and/or entities responsible for the enactment of detrimental policies, agreements, and legislation that adversely impacted American Indian communities.

The TREC report contains various recommendations that propose solutions for fostering healing, restoration, and reconciliation across communities. These recommendations are designed to confront historical wrongdoings by the state of Colorado, local municipalities, institutions, and the federal government. The recommendations center on rectifying the unlawful acquisition of public lands, reconciling the economic marginalization of American Indian communities, and implementing reparative policies to restore the dignity of affected individuals and Tribal Nations.

The research conducted by the TREC is characterized by its commitment to factual accuracy and comprehensive documentation from reputable sources, rather than a revisionist approach. The Commission's work aims to present an objective reality grounded in concrete evidence, rather than relying on theoretical perspectives. Despite facing constraints in terms of time and budget, the TREC has endeavored to provide a thorough and precise examination of historical truths, revealing extensive and troubling issues. The analysis of historical documents, particularly treaties, unveils the pervasive bias and distortion prevalent in various sources. The scarcity of firsthand American Indian accounts further exacerbates this bias, complicating efforts to uncover the unfiltered truth obscured by misinformation, misinterpretation, and cognitive biases. Overcoming these challenges demanded a meticulous and critical approach to historical research, dismantling common misperceptions and biases ingrained in traditional narratives.

“We have no intention of breaking new ground with this Commission. The ground was broken when it was stolen.”

THE COMMISSION

The formation of People of the Sacred Land (PSL) in Colorado was spurred by the recognition of inaccuracies and omissions in the historical narrative of the region. PSL is dedicated to conducting research, uncovering the truth, promoting equity, and facilitating restoration and reconciliation regarding the past. The inception of the TREC stemmed from PSL's desire for an in-depth inquiry into the dispossession of Indigenous lands in Colorado, the forced displacement of Native peoples, the causes and mechanisms of genocide, the role of policies, treaties, and laws in harming Indigenous communities, as well as potential solutions and actions to address historical injustices.

The seven Commissioners of the TREC represent Tribal Nations and others that were forcibly removed from Colorado. These commissioners were selected for their extensive expertise in historical, economic, legal, and cultural matters. Additionally, their appointment is based on their proven track record of ethical and professional behavior, as well as their impeccable integrity and reputation for excellence in their previous professional work.

Over the last two years, the TREC has been tasked with several goals and objectives, including establishing a historical record of violations of Native peoples in Colorado and

promoting truth, justice, healing, and reconciliation. The Commission has also aimed to assess the economic loss, damage, and impact on Tribal Nations in Colorado from 1851 to the present. Finally, the TREC seeks to restore the human dignity of Native families and Nations, investigate various human rights abuses, assess economic losses, and provide redress for crimes committed against Native people.

People of the Sacred Land and the Commission wish to thank the many contributors to this report. Many hours of work have been provided by tribal authors and consultants, as well as other historians and experts on tribal affairs. This collective work would not have been possible, however, without generous funding support from a large number of organizations and individuals. Institutional grant funders include the First Nations Development Institute, the L.P. Brown Foundation, The Colorado Health Foundation, The Colorado Trust, the Making a Better World Fund, the Chinook Fund, the NDN Collective, the Rose Community Foundation, the Christensen Fund, and the E.J. Data Foundation. The many institutional donors listed here are a testament to the widespread support for the Commission's efforts among both Native and non-Native Coloradoans and others around the country. In addition, dozens of individual donors have generously contributed funding to support this effort. Many thanks to all of you for bringing Coloradoans together around the need for truth, restoration, and education.

THE INVESTIGATIVE WORK

Truth: An examination of the historical accounts for each of the identified Nations was undertaken through the review of treaties, governmental records, scholarly works, periodicals, newspapers, and other relevant sources. The primary objective of these assessments was to compile a thorough historical narrative that assessed various interactions between the military, white settlers, and Native peoples. These interactions were examined in terms of their causes and the resultant outcomes, including casualties, injuries, displacement, and property loss. The detailed findings of these comprehensive analyses for each of the ten Nations are presented in this final report.

Restoration: The TREC asserts that it is essential to pursue restoration measures rather than just reconciliation or reparations. Reconciliation, specifically in addressing the assaults on Indigenous ways of knowing and being, and committing to moving forward in a manner centered on mutual respect and understanding, is crucial for genuine healing to take place. Additionally, reparations will be imperative to acknowledge and repair the causes and consequences of human rights violations and injustices suffered by Native communities. Nevertheless, reparations or reconciliation on their own are insufficient in addressing the profound harm and loss experienced by Native populations due to the dispossession of their traditional territories. Deliberate efforts need to be made to repatriate lands to Tribal Nations to facilitate the restoration of their severed connections with the land.

Through the comprehensive examination of historical data and economic analysis of losses incurred, the TREC aims to explicate the historical truth and cultivate collaborative relationships that facilitate the restoration of land, preservation of cultural and sacred sites, and the reintegration of displaced Tribes to their ancestral territories.

A Historic Economic Loss Assessment (HELA) was carried out to assess the economic damages suffered by American Indians, encompassing the appraisal of both the tangible loss of human lives and the intangible cost associated with the permanent devastation of the Native economy. This destruction included factors such as land dispossession, exploitation of natural resources like minerals, oil, and gas, water rights violations, illegal settlements, agricultural losses, the termination of the buffalo, and habitat fragmentation. The HELA findings presented in this final report quantify the long-standing repercussions of the profound losses endured by Native peoples, revealing how these injustices served as the foundational source of wealth that facilitated the development of Colorado and the Western region.

The truth about the extermination, removal, relocation, and all of the immoral and dishonest actions serves as a call for restorative justice. Restorative justice can take many paths, such as litigation, restitution, land back, reparations, preserving sacred sites, and co-management of the precious resources of the State of Colorado. It can also mean working toward a responsible reconstruction and recovery. It is not the intent of the People of the Sacred Land to cause harm to current residents. A commitment to assign a fee of a selected percentage to all future real estate transactions could serve as a constructive alternative for all.

“Americans cannot naively espouse ideals that our own historic actions refute. Failure to come to terms with having broken treaties and destroyed hundreds of thousands of people undermines our moral authority. How liberating it would be to escape the hypocrisy and become a society that lives by its professed ideals!”

Bill Bradley, *Time Present, Time Past, A Memoir*

Education: The historical truths of violent displacement and forced land dispossession of the Native peoples in Colorado have been largely obscured by the state, particularly within its education systems. The majority of Colorado residents have been educated in schools that either downplay or fail to adequately address the history of the state’s Native peoples, thus perpetuating a damaging narrative about American Indians, Tribal Nations, and their communities.

The TREC had a dual focus on education, aiming to support Tribal Nations in recognizing and comprehending the historical and economic injustices they faced in Colorado, as well as educating the public on past actions that affected Tribal Nations. In order to facilitate lasting healing, it is imperative for all individuals in Colorado to be well-informed about this shared history, underscoring the notion that accurate American Indian history is an integral part of Colorado’s collective historical narrative.

In order to accomplish these two objectives, the TREC commissioned the following reports and curriculum:

1. An analysis was conducted to measure the impact and implementation of Colorado House Bill 1192, Inclusion of American Minorities in Teaching Civil Government, which states:

Concerning the inclusion of matters relating to American minorities in the teaching of social contributions in civil government in public schools, and, in connection therewith, establishing the history, culture, social contributions, and civil government in education commission to make recommendations to include the history, culture, and social contributions of American Indians, Latinos, African Americans, and Asian Americans, the lesbian, gay, bisexual, and transgender individuals within these minority groups, the contributions and persecution of religious minorities, and the intersectionality of significant social and cultural features within these communities, in the teaching and content standards for history and civics, and making an appropriation.

The findings, included in this final report, detail current school district implementation of this legislation across all 180 school districts in Colorado as well as provides a discussion on challenges and plans for future incorporation of the bill's mandates into educational curricula.

2. An overview of the history of K-12 Indian Education was amassed drawing on existing scholarly literature. This report encompasses various aspects of Native education, such as the establishment of boarding and industrial schools in Colorado during the 1800s, the establishment of Tribal Education Departments and Title VI Indian Education initiatives in public schools in the 1960s/1970s, and the most recent emergence of schools being developed by Native educators specifically for Native children. This report concludes by outlining specific recommendations for actions that should be taken by the state of Colorado and school districts to improve educational outcomes for American Indian students.

3. An overview of the history of higher education for American Indian populations in Colorado was compiled for the TREC. This report delves into the participation of Native students in higher education, as well as the emergence and importance of tribally controlled higher education institutions. It also sheds light on the historical treatment of Native Americans by higher education institutions, especially those in Colorado.

The history of higher education for AI/AN (American Indian/Alaska Native) individuals unveils a narrative intertwined with Native lands, revealing that

many US higher education establishments, including those in Colorado, were established on lands acquired unlawfully or forcefully taken from Tribes. The Morrill Act grants received by institutions like Colorado State University (CSU) were tainted with profit derived from land dispossession. CSU, notably, distinguishes itself from other land grant universities by retaining ownership of its original land parcels. The university openly acknowledges the substantial financial benefits it continues to derive from these lands, acquired through various activities like leasing for mineral extraction and grazing, all managed by the State Land Board.

The report offers specific recommendations for CSU and the state of Colorado to address these historical injustices. It aims to provide reparations and reconciliation for Tribal Nations and the broader American Indian community in Colorado.

4. The historical legacy of Indigenous peoples in Colorado is an integral part of the state's history; however, the state has yet to establish a compulsory educational framework for the inclusion of Native history in its curriculum. Often, instructional efforts regarding Tribal Nations and Native people tend to be centered around a Eurocentric perspective that glorifies the actions of early white settlers in the American West. Educating all students about the authentic history of Native peoples is crucial in fostering reconciliation with the past and working towards a more equitable future for all. It is imperative for educators to acknowledge historical truths and instill a similar commitment to truth-seeking in their students.

The People of the Sacred Land is developing a curriculum that is designed to address this need. By focusing on the accurate portrayal of all Native peoples in Colorado, this curriculum lays a solid groundwork for students to comprehend the complexities of historical narratives and their broader implications. This curriculum prepares students for more in-depth inquiry and discussions about the arc of history, systemic implications, and societal responsibilities.

ENDNOTES

1 For readability purposes, throughout these documents the terms American Indian, Native American, Indian, Indigenous, and Native are used interchangeably when referring to those groups possessing pre-existing sovereignty who inhabited an area in present-day United States prior to encounters with colonizing populations. However, it is important to note that the TREC argues for the critical importance of using the term “American Indian” as it pertains to discussions on sovereignty, education, and restoration. This term highlights the rights retained by American Indian tribes through nearly 400 treaties signed with the United States, distinguishing them from other racial and ethnic groups in the country. The term “American Indian” is also utilized by the U.S. Census Bureau, the U.S. Office of Management and Budget, and the U.S. Department of Education.

In the history of American law, the classification of American Indian status has always been viewed as a matter of citizenship rather than race or ethnicity. American Indian tribes are seen as sovereign governments, with tribes being defined as governmental and political entities rather than racial groups. This legal principle has been established in the U.S. since its inception and was acknowledged by the Supreme Court in *Morton v. Mancari* in 1974, a case that attempted to challenge the hiring preference of American Indians at the Bureau of Indian Affairs. The recent case of *Haaland vs. Brackeen* in 2023 further upheld this principle, when the U.S. Supreme Court ruled 7-2 against challenges to the constitutionality of the Indian Child Welfare Act (ICWA) brought by Texas, Louisiana, and Indiana, as well as individual plaintiffs. This Supreme Court decision not only emphasized the crucial role of ICWA in safeguarding the welfare of American Indian children but also further underscored the distinction between American Indian tribes as political and governmental entities rather than merely racial or ethnic groups.

2 The three Ute Nations were combined into one report.

Executive Summary

TREC Executive Summary

This final report presents the comprehensive findings of the Truth, Restoration, and Education Commission (TREC) of Colorado, which, over the last two years, in collaboration with the People of the Sacred Land (PSL), has diligently examined the widely untold history of Colorado in order to uncover the causes of widespread land displacement and the genocide of Native peoples in the state. The TREC's primary focus is on restoring the status of Tribal Nations in modern-day Colorado, and establishing an environment where Native communities in the state can grow and succeed. In the wake of irreparable harm, this work is dedicated to the restoration of Indigeneity, relationality, and wellness for the next seven generations.

The TREC report provides a comprehensive examination of the extensive damage endured by Native peoples due to forced relocation, illegal seizure of land, violations of human rights, acts of violence, warfare, deceptive practices, and other illicit actions perpetrated by the state of Colorado, its citizens, and the US government and federal agents over the past 170 years. The TREC report outlines the processes by which the genocide transpired and pinpoints the entities accountable for implementing harmful policies, agreements, and laws that had detrimental effects on American Indian populations.

Research findings indicate that since 1851 irreparable harm occurred in various ways, including:

GENOCIDE

- The US government took responsibility for the Sand Creek Massacre by agreeing to compensate those who lost property, but most descendants have never received reparations.
- The State of Colorado has never recognized its part in the egregious actions taken against American Indians, including losses of land, lives, the buffalo, and other resources.
- The State of Colorado has never acknowledged its part in the immoral and contemptuous removal of Tribal Nations from their sacred homelands.
- The Territorial Governor of Colorado in 1864 issued illegal proclamations, one of which was commanding white citizens to kill Indians and take their property, resulting in numerous murders of innocent American Indians. Reparations have never been made.
- A census in 1865 revealed the enslavement of American Indian people in Costilla and Conejos counties of Colorado, with over 100 children being sold into slavery.
- There has never been recognition or compensation for the deliberate slaughter of the Buffalo by the US military and white civilians.
- The military frequently destroyed the personal property of American Indians without justification.

LAND GRAB

- The Indian Trade and Intercourse Act of 1834 focused on regulating trade and interactions with Indian tribes, maintaining peace on the frontiers, and defining Indian country as areas where Indian title had not been extinguished. It prohibited land transactions without a treaty, with penalties for settlements or surveys on Indian lands. Compensation for transgressions was supposed to be based on the damage caused to the land and resources like Buffalo. This act was violated numerous times and compensation was rarely if ever paid.
- A comprehensive review of illegally transferred land without proper signatures on the 1861 Fort Wise Treaty is necessary as required by US law. Despite attempts to rectify the error at the time, the necessary signatures were not obtained resulting in illegal transfers.
- The City of Denver and surrounding cities were occupying land that was not legally transferred as required. Compliance issues with the 1861 Fort Wise Treaty resulted in certain cities along the Front Range not having title to the land they occupy. This did not stop transfers from occurring.

- The City of Denver was granted permission through the Congressional Act of 1864 to give titles to existing illegal landowners, but the process was tainted because of suspected illegal actions in the amendment to cure the problem.
- The US government gave land to Railway companies in Colorado through the Railroad Act of 1862, some of which was not legally ceded.
- Colorado State University (CSU) received Morrill Act grants that were funded from illegal or coerced land dispossession. CSU still maintains ownership of a sizeable portion of the original parcels, managed by the State Land Board, and openly acknowledges the ongoing significant financial revenue generated by them.
- Water rights were not explicitly addressed in the treaties, meaning that unless Congress specifically stated that they were not included, it is within the inherent powers of Indian Nations to have reserved them without notice.
- If certain subsurface minerals were not addressed in any treaties or explicitly mentioned, they are considered to belong to American Indians unless proven otherwise. The unauthorized extraction of these minerals without compensation has had a negative impact on the Ute Nations' economic prosperity.
- The US Forest Service acknowledges that there are approximately 200 Indigenous sacred sites that continue to be unprotected within the external boundaries of the State of Colorado.

THEFT IN PERPETUITY

- As the second largest landowner in Colorado, the Colorado State Board of Land Commissioners (State Land Board) manages a \$4.1 billion endowment of assets for the benefit of Colorado's K-12 public schools. There has never been a public accounting of land holdings that originated from Native legal or illegal land cessions.
- The Indian Claims Commission (ICC) was established in 1946 to hear cases against the United States on behalf of American Indian tribes. Critics argue that the ICC lacked fairness in its process and failed to return any land to the Indian Nations. The lack of compounding interest on awards also raises legal questions.
- There has never been a public accounting of the substantial financial revenue that CSU continues to derive from Morrill grant lands, nor has there been a significant commitment to support American Indians at CSU.

- State trust lands managed by state agencies generate revenue for public institutions through various activities like grazing, logging, mining, and oil and gas production. The state of Colorado depends on Native Lands and resources to support non-Native institutions and to reduce taxpayer burden. Tribal nations have no control over state trust lands.

LOSS OF SOVEREIGN STATUS

- Congress eliminated the sovereign rights of American Indians without their input or legal justification. The Peace Commission of 1867-68, led by military officers, aimed to remove or relocate all Indian Nations under the guise of wanting to establish and maintain peaceful relations.
- The State of Colorado refuses to recognize that at least ten American Indian Nations still hold hunting and fishing rights as stipulated in treaties that have never been revoked.
- The State of Colorado willfully overlooks the tens of thousands of tribal members residing in the state who are enrolled in tribes other than the Ute Tribes. Members of federally recognized tribes have a unique status as tribal citizens, with rights retained through the Indian Citizenship Act of 1924, even if they were forcibly displaced from Colorado or voluntarily live away from their homelands.

Based on these findings, it is important for both the State of Colorado and the federal government to acknowledge the harm and genocide that has been inflicted upon American Indian people. This includes land theft and the destruction of languages, cultures, and communities, which have resulted in detrimental social factors affecting the well-being of Native peoples. These factors include income disparities, negative educational outcomes, unhealthy community environments, lack of employment prospects, and limited access to quality health-care.

We urge the state of Colorado and the federal government to make tangible efforts towards healing by implementing a comprehensive approach that includes restoration, reparations, truth-telling, policy reform, and transformative justice. It is crucial to prioritize the perspectives and voices of Native peoples, while also acknowledging and honoring Tribal sovereignty and the rights of all Tribal citizens in the state.

Every section of the full report includes specific recommendations regarding the issues raised within that section; however, the following is a list of prioritized recommendations that focus on restoration, reparations, and reconciliation:

RESTORATION

- We recommend that the US Congress rescind the rider to the Indian Appropriations Act that denies Tribal sovereignty and re-establish the right of Native Nations to negotiate treaties.
- We recommend that the US Congress resolves to take legislative action to allow Tribal Nations who were immorally or illegally removed from their homelands to reposition and reoccupy any or part of their traditional homelands within the state of Colorado.
- We recommend that the US Congress and the US Railroads return all unused railroad land back to the original owners unless there is proof of compensation for the land taken.
- We recommend that the US Congress and the State of Colorado resolve the illegal land transfer related to Article 6 of the Fort Wise Treaty of 1861 by restoring any and/or part of the land unlawfully taken from the Northern Cheyenne or the Northern Arapaho.
- We recommend that CSU return the remaining 19,000 acres of land of the original land grant to those Tribal Nations that it was illegally taken from.
- We recommend that the State of Colorado and its Department of Natural Resources honor the treaties of Tribal Nations by restoring the Tribes' hunting and fishing rights within the boundaries of the State of Colorado.
- We recommend that the State of Colorado officially recognize the status of Indian citizenship as granted in the 1924 Indian Citizenship Act, which guarantees rights that are retained as Tribal citizens no matter where an individual is located.

REPARATIONS

- We recommend that the US Congress provide compensation for the unauthorized invasion of Tribal Nations that held congressional title to land in Colorado based upon violations of the Indian Trade and Intercourse Act of 1834.
- We recommend that the United States Congress of the United States of America resolve to provide restitution to the descendants of the Sand Creek Massacre.
- We recommend that the US Congress conduct a comprehensive inquiry and offer compensation to the descendants of those individuals whose children were abducted and forced into slavery by Indian Agent Lafayette Head.

- We recommend that the US Congress take action to provide compensation to Tribal Nations who traditionally depended on the Buffalo as a vital food resource.
- We recommend that the US Congress resolve to compensate for the loss of lives caused by the indiscriminate invasion of the homelands of the Tribal Nations residing in the state of Colorado including the intentional destruction of homes, property, and the theft of property by the US military.
- We recommend that the US Congress resolve to require all Higher Education Institutions that received land grants from the Morrill Act of 1862 to provide free tuition and room and board for the descendants of affected Tribal Nations at each Higher Education Institution that received land grants.
- We recommend that the US Congress resolves to compensate for damages related to the loss of minerals located on the ceded portions of Tribal lands that were not specifically released within treaties.
- We recommend that the State of Colorado resolves to financially compensate the descendants of American Indian individuals and Tribal Nations for the harm caused by Territorial Governor John Evans through two proclamations that significantly and permanently harmed Native people.
- We recommend that the State of Colorado resolve to compensate the Northern Cheyenne and Northern Arapaho for the illegal occupation without a legal title for Denver and the surrounding cities.
- We recommend that Colorado pass a law mandating an appropriate fee on all future real estate deals in the state. This fee would not be a tax because it would rectify past unlawful land transactions in Colorado. The income from these fees should be used to mitigate the lasting effects of forced displacement, genocide, and other historical injustices that Native communities have endured.
- We recommend that the State of Colorado and CSU establish an independent Commission to manage the assets received from the land granted to CSU under the Morrill Act of 1862. This Commission should have the power to determine how the funds can best support Native American students, particularly those from Tribes that donated land to CSU.
- We recommend that all American Indian students, especially those from the Ute Nations and the other Tribal Nations that were forcibly displaced from Colorado, should receive room, board, and tuition at all educational levels at CSU.
- We recommend that CSU create a veterinary program for American Indian students where at least 10 American Indian students are admitted in a cohort every year going forward.

- We recommend that the Colorado School Fund and the Colorado Land Board identify land that was illegally taken from Tribal Nations and ensure that future budgets include special funds to provide additional support for American Indian students attending public schools.

RECONCILIATION

- We recommend that the US Congress and the Department of Interior resolve to calculate the water rights taken without permission in the treaties made with Tribal Nations that ceded land within the state of Colorado boundaries.
- We recommend that the US Congress resolve to correct the vast issues involved in the construction, discriminatory processes, and implementation of the Indian Claims Commission.
- We recommend that the US Congress and the US Forest Service resolve to create a process in collaboration with Tribal Nations to preserve and protect sacred sites within the state of Colorado.
- We recommend that the State of Colorado resolve to conduct a full public audit of the Public-School Fund and the Colorado State Land Board. These entities are holding land that was either directly or indirectly taken from Tribal Nations, and the resources generated have done little to help American Indians.
- We recommend that the State of Colorado require the accurate, comprehensive history, including genocide, forced removal, and land dispossession of Tribal Nations, be taught at all levels in public schools and public institutions of higher education.
- We recommend that the Colorado Department of Education (CDE) require that the accurate, comprehensive history, including genocide, forced removal, and land dispossession of Tribal Nations, be taught in higher education teacher training programs. It should also be a requirement for teachers attempting to acquire Colorado state licensure from another state.
- We recommend that the State of Colorado collaborate with the Native community to create an orientation document for State Legislators. This will help them better understand the American Indian population in Colorado, including those living on Ute reservations and along the Front Range.
- We recommend that the State of Colorado and the City of Denver collaborate on constructing an American Indian Cultural History Center. This center will house offices for any Tribal Nation that ceded land in Colorado and function as a hub of information regarding American Indians in the state.

Truth, Restoration & Education Report

- We recommend that the state and federal government establish a restorative justice center for American Indians in Colorado in partnership with the Native American Rights Fund.
- We recommend that the state of Colorado's inquiry into the history of Native boarding schools involve more participation by American Indian scholars, consultants, and researchers who are better qualified to evaluate the accurate history and legacy of these schools.
- We recommend that the State of Colorado hold any individuals and/or entities fully accountable for any abuses or mistreatment of Native children at boarding or industrial schools that operated within the state.

*Kiowa and Comanche &
Kiowa and Apache History*

Kiowa and Comanche Tribes

HISTORY OF THE COMANCHE INDIANS PRE-TREATY ERA

Linguistically Shoshonean in origin, the Comanche once lived in the Snake River region of eastern Wyoming or on the Middle Loup River in Nebraska. After the Comanche separated from the Shoshone, they became a distinct culture. The Comanche obtained horses from the Spanish in present-day New Mexico shortly after 1600, which allowed them to become one of the most powerful nomadic tribes of the Southern Plains. Many tribes acquired their horses from the Comanche. The key to the Comanche's success on the Southern Plains was their superior skills with horses.

By 1700, the Comanche moved south to the Arkansas River headwaters near the Smoky Hill River in present-day eastern Colorado and western Kansas. They started to spread throughout present-day eastern Colorado, western Kansas, western Oklahoma, and northwestern Texas in 1720, and they lived between the Platte River headwaters and the Kansas River by 1724. During this expansion era, the Comanche engaged in conflicts with several groups.

They fought the French-allied Jumano to the east, the Spaniards and the Spanish-allied tribes in present-day New Mexico to the west, and the Apache to the south. The Comanche campaigns were successful. Once they defeated the Apache, *Comanchería* (Comanche Country) spanned as far south as the Río Grande. In 1836, the Comanche claimed all the land between the Arkansas River to the north, the Mexican settlements to the south, from present-day Taos and Santa Fe in New Mexico to the west, and Cross-Timbers in present-day Texas to the east.

The Spanish-allied Ute and the Comanche fought constantly from 1749 until the Spaniards made peace with the Comanche in 1786. New conflicts started in 1802 when the Osage were pushed toward the Arkansas River. The Osage and other eastern tribes had obtained a more significant number of firearms than the Comanche through trade after ceding much of their lands to the United States. As these eastern tribes encroached on the eastern borders of *Comanchería*, the Comanche engaged in intermittent conflicts with them.

The Cheyenne and Arapaho moved into areas along the upper Arkansas River in 1820, which provoked a war between the two tribes and the Comanche. At the Battle of Wolf Creek in 1838 the Comanche suffered a major defeat, and consequently the Cheyenne and Arapaho remained along the northern border of *Comanchería*. The integrity of their hold on the Southern Plains was important to the Comanche. The tribe strongly objected to other Indian tribes being removed to lands in present-day Oklahoma in the 1830s because it was part of their hunting grounds.

Sam Houston represented the United States in peace talks with the Comanche in San Antonio in 1832. The Comanche, along with other Southern Plains tribes, later attended peace talks with federal representatives at Fort Gibson in present-day Oklahoma in 1834. On August 24, 1835, Comanche leaders made an agreement with the United States to share hunting lands with eastern tribes and allow safe passage for U.S. citizens through Comanche lands.

Northern bands of the Comanche, along with their Kiowa allies, made aggressive raids on the Anglo-American settlers in Texas who were encroaching on their lands between 1835 and 1836. The Comanche made a treaty with the Republic of Texas on May 29, 1838, but it was short-lived. Later that year, President Mirabeau B. Lamar succeeded Sam Houston and favored a war of extermination against the Comanche.

Comanche leaders arrived in San Antonio for new peace negotiations in 1840, but 12 of these leaders were killed by Texans during the peace talks. From that point until 1845, relations between the Republic of Texas and the Comanche were hostile. The decreasing number of bison in northern *Comanchería* forced the northern bands of the Comanche to push into Texas. Situations changed when Texas joined the Union in 1845. The United States sent representatives to the Comanche the following year to negotiate peace, but this initiative yielded no results. Finally, after more than a year of soliciting peace, only one of the many Comanche bands signed a treaty recognizing the jurisdiction of the United States in exchange for an agreement that no whites would be allowed on Indian lands without a pass from the President to establish trade.

The southern Comanche suffered epidemics of smallpox and cholera, which killed their head chief in 1849. White encroachment in the 1850s angered the Comanche, and as the federal government removed eastern tribes farther toward Comanche hunting grounds, tensions grew. The Sac and Fox were relocated to Kansas from Illinois, and in 1854, the Comanche allied with the Kiowa, Cheyenne, and Arapaho to drive the Sac and Fox from the Central Plains. The

fighting took place in the Smoky Hills region of central Kansas. The allied tribes had a force of 1,500 warriors, and though the Sac and Fox had only 100 warriors, they defeated the attacking force due in part to U.S. government-issued rifles.

In 1853, the Comanche, Kiowa, and Kiowa Apache met with U.S. representatives at Fort Atkinson in present-day Kansas to negotiate a new treaty. The treaty called for peaceful relations among the tribes, the United States, and Mexico, an end to attacks on wagon trains on the Santa Fe Trail, and the right for the United States to build forts and roads in Indian territories. The United States agreed to pay \$18,000 in cash and trade goods annually to the three tribes for ten years.

On October 18, 1865, the Comanche, Kiowa, and Kiowa Apache met with representatives of the United States to sign a new treaty at the mouth of the Little Arkansas River at present-day Wichita, Kansas. The tribes agreed to live in Indian Territory in present-day Oklahoma, but some Comanche bands were absent from the agreement. The Comanche, Kiowa, Cheyenne, Arapahos, and Kiowa Apache met at Medicine Lodge Creek, about 60 miles south of Fort Larned in Kansas. The tribes agreed to share a reservation between the Canadian and Red Rivers in present-day Oklahoma. After negotiations, the Comanche and Kiowa were allowed to hunt on their former lands in Kansas.

In a period of change in the 1870s, by 1875, the Comanche finally stopped the nearly constant campaigns that pushed the Apache farther south. The Comanche's ritual use of peyote likely started during this time. This Comanche ritual practice significantly influenced other tribes and spread to the Kiowa, Wichita, Pawnee, Shawnee, Ponca, Kickapoo, and Kansa by 1907. Although the Comanche no longer controlled *Comanchería*, they remained a highly influential tribe into the 20th century.¹

HISTORY OF THE KIOWA INDIANS PRE-TREATY ERA

The Kiowa's original name for the tribe was *Kwu'da* (pulling out) or *Tepda* (coming out). These names are most likely a reference to their creation myths. In the tribe's creation mythology, the earth had been flooded, and then a drying period occurred, and land formed. As the earth dried and the land took shape, forests grew. A supernatural being, *Saynday*, called the tribe into the world by striking a hollow log with a stick, bringing each member of the tribe forth until a pregnant woman became stuck, thus blocking any others from following. The forest began to recede, and the bison took to the newly formed grassy plains. *Saynday* taught the people of the forest, created from a tree, to hunt bison on the plains; thus, the people of the forest became the Kiowa of the plains. It is worth noting that the tribe's creation mythology is complementary to the geological records of glacial recessions that formed forests of coniferous and deciduous trees that eventually died out to form the plains of North America.

The name Kiowa evolved from the Comanche name for the tribe. The Comanche originally called their neighbors and later allies *Kaigwa* (two halves differ). This name referred to the way Kiowa warriors wore their hair. The warriors traditionally cut only one side of their hair and left the other long. As the Europeans began to make records of the tribe, *Kaigwa* became Kiowa. According to the tribe, the name Kiowa now means “the principal people.”

NOMADIC HUNTERS AND THE HORSE

The Kiowa were nomadic hunters who followed the seasonal bison migrations on the plains. They traded with agricultural tribes, such as the Mandan, Hidatsa, and Arikara, who lived in permanent settlements along the Missouri River. The Kiowa traded surplus bison hides in exchange for corn and other agricultural products. This trade system was essential to the Kiowa to maintain a stable food supply. The agrarian tribes also benefited from the supply of bison products, so the system was carefully maintained to ensure mutual benefit.

The Kiowa developed utilitarian dwellings to accommodate their nomadic lifestyle. The tribe lived in tipis, made of bison hides and wooden poles, which could be collapsed and raised easily as the tribe followed the herds. The poles of a tipi were collapsed and reconfigured to form a triangular frame. The hides were used to strap all other possessions onto the frame to form a device called a *travois*. The narrow end of the *travois* was attached to an animal, and the wide base was dragged along the ground. Before the tribe acquired horses, they used dogs to pull the *travois*.

Horses were acquired from the Spanish settlements in New Mexico but quickly spread to various plains tribes. The horse catalyzed a cultural revolution for the nomadic plains tribes. Horses made hunts faster and more successful, and the tribe’s territory grew. The tribe could move a *travois* with greater efficiency, thus allowing the tribe to keep more material possessions while remaining highly mobile. The horse quickly became the ultimate symbol of social status. Bride wealth was paid in horses, and warriors achieved their highest honors by stealing horses from an enemy. Long-distance communication between bands was also more accessible, which enabled the tribe to hold more frequent ceremonial gatherings. In nearly every way, the horse made Kiowa culture thrive.

The tribe’s oral traditions say that the Kiowa made the first horse. This horse was discarded and became *mankiah* (whirlwind). The tribe did not need to fear any plains storms or tornados because they had created *mankiah*. The tribe’s second attempt to make a horse was more successful. This horse was made from parts of elk, turtle, dog, deer, turkey, and hair from *mankiah*. Frenchman René-Robert Cavelier, Sieur de La Salle, was the first European explorer to write about the Kiowa. He recorded that the Kiowa and Kiowa Apache had many horses in 1682. By the time Europeans and Euro-Americans began to enter Kiowa lands, the tribe was known as expert horse riders of the plains.

KIOWA – SOCIAL AND POLITICAL STRUCTURE

The most basic political unit of the Kiowa was the band. A band was frequently one kinship group with some unrelated members. Bands resided and traveled as a unit. A band usually had between 15 and 50 tipis that housed a family with five members. Bands formed around the most honored kinship group members as a necessity to maintain a nomadic hunting lifestyle. It was common for a man to leave his band and form a new band with his friends and close relatives, so bands shifted and fluctuated over time.

Six large bands formed the major subdivisions of the Kiowa tribe: *Kiagwa* (Kiowa proper), *Kata* (Biters), *Khe-ate* (Big Shields), *Kogui* (Elks), *Sindiyuis* (Saynday's children), and *Semat* (Thieves). The Kiowa Apache belonged to the *Semat*. Each subdivision had its own chief. Each of these subdivisions had its own history that played a part in the tribe's past. Each subdivision had a specific role in the most critical Kiowa ceremony, the *K'ado* (Sun Dance).

Kiowa society was a hierarchal class system. The highest class was the *onde*. This class consisted of keepers of religious objects, honored warriors, and prominent tribal leaders. Wealth played a minor role in the tribe's class system. Warriors and leaders gained most of their wealth through achieving honors or acts of heroism. In most cases, wealth accompanied but did not necessarily determine social status.

Roughly 10 percent of the tribe belonged to the *onde*, which included men and women. Approximately 40 percent belonged to the next class, the *ondegup'a*. This class was formed from less influential leaders, less distinguished warriors, and individuals with limited wealth. Most of the tribe belonged to the poor class called the *kaan*. The lowest class, the *dapone*, was reserved for those without wealth or military experience.

There was some ability to move between classes. Any man who achieved high honors in battle could quickly rise to a higher class. A man could also be demoted as rapidly. Indiscretions, such as dishonesty, theft, or callused [*sic*] treatment of another tribe member, could result in demotion. Members of the *onde* were less likely to face demotion for minor offenses that might result in punishment for a lower-class individual. Major crimes, such as the murder of another Kiowa, resulted in the offender being ostracized. Women had less upward mobility. Most female members of the *onde* had to be born or married into that class, but there were exceptions for the most skilled at valued crafts.

The tribe's leading chiefs were part of the *onde*. Each band had a chief who made decisions that concerned his band. It was expected that at least one of the band chiefs would achieve enough diplomatic and military honors to carry his influence across bands. The band chiefs met in a council to make decisions for the tribe. The council functioned as a unicameral legislative body with some executive powers. The most honored band chief likely had the most influence over any decisions. Councils were responsible for declaring war, establishing peace with enemies, and determining the schedule and location for tribal ceremonies.

DOG SOLDIERS AND WARRIOR SOCIETIES

A distinctive class of Kiowa warriors that served multiple functions were called “Dog Soldiers” because a dog had visited them in either a dream or a vision. These men regulated the collective hunts. Before a hunt began, the Dog Soldiers would position themselves to form an approved perimeter for the hunt. No hunters were allowed to pursue bison beyond the perimeter, or his horse could be shot. Dog Soldiers presided over tribal ceremonies and served as guards and police for the camps. During some travel periods, the Dog Soldiers rode on all sides of a band to ensure that none of the younger men broke away to go on raids and made trouble for the tribe. Dog Soldiers were selected from the warrior societies.

The tribe had five warrior societies. Young boys joined the *Polanyup* (Rabbits). As these boys learned essential skills, such as hunting and leadership, they progressed through the five warrior societies. There were 12 deeds that qualified as war honors. These deeds ranged from stealing an enemy’s horse to charging at an enemy leader in battle. The highest honor was to touch, but not kill, an enemy warrior. Each man had to complete a minimum of four deeds to be considered a warrior.

The highest and most honored warrior society was the *Koitsenko*. Only the ten most honored warriors were admitted to this society. They wore red sashes and carried sacred spears into battle. A *Koitsenko* anchored one end of his red sash to the ground and fought from that position until another warrior allowed him to yield his ground. If one was at risk of being killed, the other commanded him to advance. The command permitted him to retreat. One rule of the *Koitsenko* was to do the opposite of what was commanded.

KIOWA – EARLY HISTORY AND THE FIRST DIVIDE

The precise origins of the Kiowa are challenging to determine. The tribe’s nomadic lifestyle makes pinpointing an exact point of origin difficult. The most confusing factor is that the Kiowa language is part of the Tanoan linguistic group. The other Tanoan language groups, Tiwa, Tewa, and Towa, are part of the Pueblo language group and are intensely concentrated near New Mexico. The Tanoan linguistic classification is controversial because Kiowa culture is highly distinct from the Pueblo cultures, but the Kiowa language shares a common linguistic ancestor with the Pueblo speakers. Linguistically, the Kiowa may share a lineage with tribes from the southwest. Still, the earliest historical records place the Kiowa closer to the Black Hills when Europeans arrived in North America. In any case, whether the Kiowa were originally from the region near the Black Hills or not, it was in this region that the tribe became the culture currently identified as Kiowa.

The Kiowa claim that the tribe initially inhabited an area close to the headwaters of the Missouri and Yellowstone Rivers in present-day western Montana. According to the tribe, this was where *Saynday* called them into existence through a hollow cottonwood. Shortly after the

tribe's era of creation, some Kiowa ancestors intermarried with the Sarci tribe, who lived near the Saskatchewan River in present-day Canada. The Sarci spoke a language like the Apache. These intermarriages produced the Kiowa Apache. The Kiowa Apache traveled and coexisted with the Kiowa, but they were an independent culture with a distinct language.

According to the Kiowa, the Kiowa split at some point in the 1600s when two leaders disagreed over mutual claims to an antelope. The defeated leader took his band, known as the *Azatanhop* (angry travelers), to the northwest. The Kiowa and Kiowa Apache moved southeast to the Black Hills, which the Cheyenne, Arapaho, and Crow already occupied. There is no record of what became of the *Azatanhop* after the divide.

The Kiowa traveled the plains from Saskatchewan to Texas throughout their history. The plains received little rainfall, had few trees, and could experience extremes of hot and cold temperatures. It was a challenging and dynamic environment that required a capacity to adapt to thrive. The nomadic hunting culture allowed the tribe to succeed in the plains, but there were few resources beyond the bison. The Black Hills of present-day South Dakota formed a resource-rich geographic anomaly that attracted many plains tribes.

The Kiowa first acquired horses while moving across the Yellowstone River to the Black Hills of present-day South Dakota. It is believed that the tribe obtained horses from the Crow. The Kiowa were a smaller tribe than others in the region, making them vulnerable. They allied with the Crow to the west around 1700. This alliance was the first diplomatic success of the Kiowa during their time in the Black Hills, and it allowed them to prosper.

FIGHT FOR THE BLACK HILLS AND THE GREAT DIVISION

The Kiowa had control over their territory in the Black Hills at the start of the 18th century. The Blackfoot, Arapaho, and Cheyenne lived to the north, the Shoshone and Crow to the west, and the Hidatsa, Arikara, and Mandan to the east. The Kiowa formed stable peace and trade relations with the three agricultural tribes to the east and an alliance with the Crow, the largest nation to the west. The Kiowa were relatively secure in the Black Hills during the early years. They had reasonable hunting grounds to the south, strong allies, and trade partnerships to supplement their diet with agricultural products. The first challenge to the Kiowa in the Black Hills was the Comanche encroachment on the southern hunting grounds.

Intermittent conflicts with the Comanche occurred between 1730 and 1770. Over time, the two tribes developed a mutual distrust. The Comanche greatly outnumbered the Kiowa and had more horses, which made them a serious threat. Minor conflicts escalated to full-scale war after 1770. The period of peace in the Black Hills was over by this time. The Kiowa were now fighting on all fronts. The Shoshone attacked from the west, the Cheyenne-Arapaho alliance pressured the Kiowa from the north, and the Comanche occupied the Kiowa hunting grounds to the south.

The Sioux, a confederation of seven allied tribes, were the most significant threat and were aggressively expanding east toward Kiowa territory in the Black Hills. The Sioux formed a blockade of the Kiowa's eastern agricultural trade partners. This move put a strain on the Kiowa. The Sioux also had established trade for firearms with the French in Canada, which gave them a technological advantage over many of the northern plains tribes. The Kiowa were defending their territory from all directions when a smallpox epidemic killed nearly 2,000 of their people in 1781. They were left with only 300 warriors after the epidemic.

The Kiowa needed help to afford to hold off the constant threats from every direction. The Cheyenne-Arapaho alliance steadily increased its raids on the Kiowa, and the Sioux aggressions were relentless. Some of the Kiowa reluctantly decided to evacuate the Black Hills in 1785. The decision split the tribe into two bands. Nearly two-thirds of the tribe started to migrate to the southern plains. The other third stayed in the Black Hills and became the Northern Kiowa.

NORTHERN KIOWA STRUGGLE FOR THE BLACK HILLS

The Northern Kiowa managed to hold on to their territory at first. They could consistently defeat the Shoshone to the west, which gave them some relief on one front. The Sioux threat was spreading to other tribes. The Cheyenne and Arapaho temporarily allied with the Northern Kiowa to stop the Sioux expansion campaigns. The Northern Kiowa suffered a significant defeat by the Sioux in 1795 and were left on the brink of starvation with no way of reaching any trade partners. The tribe also feared a potential Cheyenne and Sioux alliance. They started a long and slow journey to reunite with the Southern Kiowa that year.

KIOWA – SOUTHERN ALLIANCE WITH THE COMANCHE

After the Southern Kiowa left the Black Hills, they had to forge an alliance with their former enemies, the Comanche. The Sioux expansions had also pushed the Comanche south. When the Southern Kiowa arrived at a Spanish settlement in present-day New Mexico around 1790, they discovered the Comanche camped nearby and prepared for a fight. The Spanish intervened and pushed for peace, hoping peace between the two tribes would create a buffer of friendly tribes between the Spanish settlements and the French traders who ventured towards them. The two tribes agreed to negotiate for peace.

The Kiowa delegation was represented by *Guikate* (Wolf Lying Down). The Comanche leader, *Pareiyi* (Afraid-of-Water), could not agree to peace before consulting with all the Comanche leaders, but he invited *Guikate* to be a guest of the Comanche. *Guikate* agreed but warned that if he were killed, it would provoke a war. He traveled with the Comanche for one year and was treated with respect. When he returned to the Kiowa, he testified to the Kiowa

chief, *Poliakya*, that the Comanche were honorable and trustworthy. By the end of 1790, the two tribes formed a lasting alliance for mutual benefit.

The Kiowa and Comanche alliance swiftly made them the dominant tribes of the southern plains. The combined territory spanned from the Texas panhandle to the Arkansas River in present-day Kansas. The Kiowa usually occupied the territory between the Arkansas and Cimarron Rivers in present-day Kansas and Oklahoma. The Kiowa and Comanche pushed the Mescalero and Lipan Apache south and west into Mexico and New Mexico, the Tonkawa out of the southern plains and into central Texas, and the Wichita east of the Wichita Mountains in present-day Oklahoma. The Kiowa successfully traded with the Spanish and orchestrated raids on other tribes or European settlers to obtain guns and horses.

REUNION OF THE KIOWA

The Spanish feared that tribes might attack their settlements in present-day New Mexico, and they banned the trade of firearms and ammunition to any Native Americans as a safeguard. The French and British had not prohibited the trade of weapons to Native Americans, which created a problem on the plains. Tribes like the Kiowa, who did not have easy access to French or British traders, had difficulty obtaining guns and ammunition. The Sioux had obtained many firearms from the French in Canada, and as they aggressively expanded west across the Northern Plains, there was a significant imbalance. The Northern Kiowa and other tribes were desperate to reach the Missouri River to trade for the firearms they needed to combat the Sioux, but they had already blockaded trade to the east.

The Northern Kiowa finally evacuated their home in the Black Hills by 1804. They briefly lived in present-day western Nebraska en route to find the Southern Kiowa. The French trader Baptiste Lalande reported that the Sioux blocked the Kiowa from moving south to reunite with their kin in 1805. The Northern Kiowa were finally reunited with the Southern Kiowa in 1806 after 20 years of separation. The Northern Kiowa helped to strengthen the Kiowa and Comanche alliance, which had been weakened by a smallpox epidemic in 1801. Without an acquired immunity to the European illness, Native Americans had extremely high transmission rates. Nearly half of the Southern Kiowa died from the epidemic.

The Kiowa attempted to make peace with the Sioux in 1815. They agreed to meet a Sioux delegation in present-day Colorado Springs, Colorado. The negotiations failed, and the Sioux delegation killed a Kiowa. Another smallpox epidemic decimated the Kiowa in 1816. Every tribe between the Rio Grande and Red River also suffered heavy losses that year; thus, the Kiowa managed to hold their territory in the southern plains.

KIOWA – EARLY RELATIONS WITH THE UNITED STATES

Colonel Henry Dodge returned to the Kiowa, a Kiowa girl whom the Osage had taken during the Cut-Throat Massacre in 1834. Dodge established the first official contact between the United States and the tribe. The tribe was invited to a peace council at Fort Gibson in present-day Oklahoma. The tribe agreed to the invitation and sent 15 of its chiefs. The council at Fort Gibson began on September 2, 1834, with representatives from the Kiowa, Comanche, Creek, Cherokee, Choctaw, Waco, Wichita, and Osage. The Kiowa were open to the idea of peace with all of the tribes except the Osage.

The council at Fort Gibson set the framework for a formal treaty between the United States and most southern plains tribes in 1835. The treaty called for inter-tribal peace, shared hunting grounds, peace with United States citizens, safe passage for United States citizens through tribal territories, and the pursuit of peace with Mexico and all other nations. The Kiowa objected to the treaty's terms and left the council early without signing any agreements. Later, they made their own agreement with the Osage for the *tai-me* to be returned. In June 1836, the Kiowa held their first Sun Dance since the Cut Throat Massacre.

The United States wanted the Kiowa to agree to a formal treaty and offered gifts and trade goods to persuade them to sign a new treaty. Ten chiefs, including *Sensondacat* (White Bird), *Kehimi* (Prairie Dog), and *Takatacouche* (Black Bird), met with men representing the United States government at Fort Gibson in the spring of 1837. These leaders signed the first official treaty between the tribe and the United States. The treaty called for peace with the United States, the forgiveness of offenses between nations, the recognition of Kiowa hunting rights on the southern plains, safe passage for settlers, and the Kiowa to seek peace with Mexico and other nations. The United States hoped the treaty would end hostilities between the Kiowa, the Dakota, and the Pawnee. *Dohasan*, the principal chief, never signed the treaty.

KIOWA – SUFFERING OF THE 1840s

A new smallpox epidemic swept through Kiowa camps during the winter of 1839 and 1840. This outbreak is believed to have killed one-third of the Native American population across the plains. Several tribes fled to the Texas panhandle in hopes of escaping the illness. The Kiowa stopped an ongoing fight with the Cheyenne in 1840. They agreed to share hunting grounds and recognized the Arkansas River in present-day Kansas as the border between the tribes. This agreement formed a merger between the Kiowa and Comanche alliances, including the Kiowa Apache and the Cheyenne and Arapaho alliances. This new alliance helped strengthen the number of warriors after the most recent epidemic.

Euro-American settlers were encroaching on Kiowa lands and brought a new illness, cholera. The sickness caused severe diarrhea that spread the pathogen through water contamination. With no effective sewage systems or method of water sanitation, cholera spread through communities with little resistance. Native Americans had no acquired immunity and were

more susceptible by blood type to the bacterium responsible. Half of the Kiowa died during the first outbreak in 1849. There were even cases of individuals committing suicide to escape the epidemic.

Euro-American settlers were responsible for decimating the bison herds on which many tribes relied. When Euro-Americans plowed their grasslands for farming, they destroyed the bison's food source. Euro-Americans also slaughtered the bison for sport at such high rates that the herds could not recover. As the tribes became increasingly dependent on trade, they started to overhunt the bison to produce trade goods. In 1841, there were too few bison to hold the Sun Dance. The tribe had to hunt antelope instead of bison by 1848 because they were facing starvation. In desperation, raids on settlements in Mexico and Texas increased, resulting in growing tensions.

The Kiowa and Comanche alliance was strained during the 1840s. The Comanche chief, *Mankaguadal* (Red Sleeve), called the Kiowa cowards for not joining the Comanche in raids on United States citizens. The Kiowa did not want to break the terms of the treaty of 1837. *Mankaguadal* was wounded during an attack on traders along the Santa Fe Trail in 1847 and called the Kiowa to come to his aid. The Kiowa refused to rescue *Mankaguadal* because of his insults, and he was left to die.

The tribe's raids into Texas after it became a part of the union in 1845 violated the treaty of 1837. The United States went to war with Mexico in 1846, and after the United States won, it acquired New Mexico in 1848. With the bison populations rapidly declining, the tribe's raids on settlements became necessary. Most territories where the tribe conducted its raids were populated by United States citizens by the end of the 1840s. The tribe's diplomatic policies had to change because the distinction between the United States, Texas, and Mexico was changing.

KIOWA DIPLOMACY IN THE 1850s

The Santa Fe Trail was subject to raids from various tribes in the 1850s. The United States tried to use the military to protect the Texas frontier and Santa Fe Trail, along which nearly two million dollars of merchandise traveled annually. Clearly, the military could not adequately defend the frontier, so diplomatic actions were taken. Thomas Fitzpatrick was appointed as the federal agent for the southern plains tribes. Fitzpatrick brought the Kiowa, Comanche, and Kiowa Apache to a treaty council at Fort Atkinson near present-day Davis, Oklahoma, in July 1853. The Fort Atkinson Treaty called for peace with the United States and Mexico, the right for the United States to construct roads and military forts in tribal territories, and an end to attacks on wagon trains along the Santa Fe Trail. In return, the tribes would receive cash and trade goods worth \$18,000 annually for ten years. The Kiowa were reluctant to sign, but the band chief, *Setangya* (Sitting Bear), signed for the tribe. *Dohasan* and other leaders disagreed with the treaty, and the Kiowa and Comanche raids into Texas and Mexico continued.

INTRUSIONS AND THE ERA OF EXTERMINATION

An allied war party of 1,500 Kiowa, Comanche, Cheyenne, and Arapaho attacked a group of Sac and Fox who had camped in the Smoky Hills region of Kansas in 1854. The United States had removed the Sac and Fox to Kansas Territory from their home territory in Illinois. The Kiowa and other allied tribes were concerned about food shortages and resolved to drive the encroaching Sac and Fox from the southern plains. The Sac and Fox only had 100 warriors but had United States government-issued rifles, while the attackers had only bows and arrows. The attacking tribes suffered a significant defeat.

Euro-Americans continued to invade Kiowa lands through the 1850s. Settlers disrupted the bison herds, and the Kiowa could no longer rely on hunting to sustain their needs. The gold rush to Pike's Peak in present-day Colorado in 1858 brought thousands of Euro-Americans through Kiowa territory. Settlements were quickly being built illegally on tribal lands, and the United States did not attempt to stop treaty violations made by the Euro-Americans. The Kiowa resorted to violence to defend their territory and way of life, but the United States threatened to end treaty payments and send a military response.

A force of Texas Rangers, Wichita, Caddo, and Tonkawa attacked a group of Kiowa and Comanche camped south of the Arkansas River in 1860. Rising Bird, a prominent Kiowa, was killed in the attack. The Kiowa staged a retaliatory attack on the Tonkawa in 1861, pushing the Tonkawa back into central Texas. The Colorado territorial governor, John Evans, initiated a policy of Indian extermination. Roughly 500 friendly Cheyenne and Arapaho were ordered to camp and were granted asylum on Sand Creek by Fort Lyon in Colorado Territory. The Cheyenne and Arapaho surrendered their arms to the authorities and were promised protection; a United States flag was flown over the principal leader's tipi as a symbol of the United States promise of protection. Colonel John Chivington led the Colorado militia in a sneak attack on the camp on November 29, 1864, while many men had left to hunt. More than 130 Indians were killed, primarily women and children. News of the Sand Creek Massacre spread across the plains, proving that the United States could not be trusted.

Kit Carson raided Kiowa and Comanche camps in the Texas panhandle around 1864. The attack occurred in the winter when food and supplies were most needed. Carson's troops attacked the first camp, but several members of the tribe escaped to warn the other camps. The tribes managed to defend the camps from Carson's raid, but the first camp was destroyed. The camp had been burned. A total of 176 tipis were destroyed, along with all food and supplies. Many people were left without shelter, clothing, or food that winter.

KIOWA – MEDICINE LODGE TREATY

The Kiowa attended another peace council at the mouth of the Little Arkansas River in present-day Wichita, Kansas, in October 1865. Representatives from the Kiowa, Comanche, Kiowa Apache, Cheyenne, and Arapaho were at the council. The tribes agreed to settle in western Kansas. The State of Kansas lobbied against the Treaty, and tribes were forced to settle elsewhere. The tribes also had to end all hostilities with the invaders and release all captives. *Dohasan* protested the treaty's terms, but all the leading chiefs eventually signed it.

Dohasan died in 1866. The leadership of the Kiowa fell to *Tene-angop'te* (Kicking Bird), *Gui-pago* (Lone Wolf), and *Satanta* (White Bear). The tribe was politically divided by which leader to support. *Tene-angop'te* favored a policy of peaceful relations with the United States. *Satanta* and *Gui-pago* supported forceful resistance.

The Treaty of 1865 was a failure. Euro-Americans continued to settle on tribal lands without consequence from the United States, and the Kiowa continued to conduct raids on settlements in Texas. Another peace council with the Kiowa, Comanche, Kiowa Apache, Cheyenne, and Arapaho met at Medicine Lodge Creek, approximately 60 miles south of Fort Larned in Kansas, in October 1867. The tribes were forcibly coerced to agree by threats of starvation and military intimidation to share a reservation between the Canadian and Red Rivers in present-day southwestern Oklahoma. The tribes were also required to allow railroad construction through the territory. The tribes were required to farm, and the United States was to supply farming equipment and trade goods. The Kiowa, Comanche, and Kiowa Apache were ordered to live in a designated section between the Red River and its North Fork as the south and west boundary and the Washita River as the north boundary. As a last-minute concession, the Kiowa and Comanche were permitted to hunt on their former lands in Kansas and Texas. *Gui-pago* was the only Kiowa leader who did not sign the Medicine Lodge Treaty.

RESISTANCE AND BLOODSHED

After the Medicine Lodge Treaty, the Kiowa embarked on a hunt in the Texas panhandle, but the hunt was unsuccessful. The bison were nearly extinct, and the Kiowa could not feed their families back on the reservation. They requested provisions that were promised in the treaty from the Indian agent. Congress had yet to approve the treaty. Thus, no provisions were granted. The Kiowa started to raid the Wichita and Caddo and later resumed their raids in Texas. Meanwhile, the Cheyenne continued to attack Euro-American settlers in Kansas and eastern Colorado as revenge for the Sand Creek Massacre. The United States started to plan an assault on the southern plains tribes.

General Philip Sheridan planned a three-pronged assault on the tribal lands during the winter when the tribes were most vulnerable. Major Andrew W. Evans led troops from the

west out of Fort Bascom in New Mexico. Major Eugene A. Carr led troops from the northwest out of Fort Lyon in Colorado. Colonel George Armstrong Custer led troops from the north out of Fort Larned in Kansas. Custer's troops hit the first camp on the Washita River on November 27, 1868. The tribes had no warning and were asleep when the attacking army opened fire.

Cheyenne, under Black Kettle, was the first attacked by Custer. One hundred and three Cheyenne, including Black Kettle and his wife, were killed, and 53 women and children were taken. Custer pushed toward the next camp, but his attack was held off by a group of warriors who had heard the attack on the first camp. Eventually, the United States army retreated, but enough damage had been done. Sheridan's campaign, a dedicated part of the 1867 Peace Commission, sent a clear message that if the tribes continued to resist, they would be exterminated. The United States demanded that the tribes settle near the military forts on the reservation. The tribes were hesitant to comply with the same directive that preceded the Sand Creek Massacre only four years prior.²

Gui-pago and *Satanta* were captured while traveling under a white flag with a message to Custer stating that the Kiowa were not involved in the battle of Washita. The Kiowa fled when their leaders were detained. The United States threatened to execute the chiefs unless the Kiowa gathered at Fort Cobb. The tribe quickly complied, and the chiefs were not executed. The Kiowa were outraged that none of the promised rations were delivered by 1871.

A party of Kiowa and Comanche attacked a wagon train in May 1871. One of the wagons allowed to pass before the party launched their attack was carrying General William Tecumseh Sherman, who wanted the offenders punished. *Satanta* claimed responsibility for the attack along with two other chiefs, *Setangya* and Big Tree. Sherman ordered the three Kiowa chiefs arrested and sent to Texas for trial. The three leaders were seized, handcuffed, and transported by armed guards to Texas.

En route to stand trial, *Setangya*, who was a member of the *Koitsenko* warrior society, sang the traditional *Koitsenko* death song:

“Even if I survive, I will not live forever,
Only the Earth remains forever;
Even if I survive, I will not live forever,
Only the Sun remains forever.”

Setangya escaped his handcuffs and stabbed one of the guards in the leg with a knife he had concealed. He was shot and killed, and his body was abandoned on the road.

The other two chiefs were found guilty of murder and sentenced to hanging. *Satanta* warned that if both leaders were executed, the Kiowa would launch a violent retaliation in Texas. The governor of Texas, Edmund J. Davis, commuted the sentence to life in prison, and the two chiefs were forced to labor for the railroad. *Gui-pago* was left as the Kiowa leader. He

refused to comply with any mandates from the United States and promised bloodshed in Texas until *Satanta* and Big Tree were finally released in the spring of 1873.

RELUCTANT SURRENDER

The United States began a new policy toward tribes in 1869. This policy was referred to as the “Quaker Policy.” Quakers and other Christians were appointed as Indian agents, with the goal of Native Americans embracing Euro-American culture and Christianity. Indian agents created programs to teach Native Americans to speak, read, and write English, immerse them in Christianity, and force them to abandon hunting and begin farming. Lawrie Tatum, a Quaker, was the first Kiowa and Comanche agent. Tatum tried to force cultural change by withholding rations, but the Kiowa resisted his efforts and continued to hunt and raid in Texas. Tatum resigned and advocated the use of military force to civilize the Kiowa.

After *Satanta* was released in 1873, he was forced to abandon his sacred medicine shield and lance and swear to never engage in war again. The lack of rations sparked unrest among the Kiowa, and *Satanta* could not dissuade the younger warriors from going on hunts and raids in Texas. A group of Kiowa, Comanche, and Cheyenne carried out another raid in the Texas panhandle against Euro-American bison hunters in 1874. After the incident in Texas, *Satanta* was held responsible by the United States for the actions of his people and was incarcerated again in Texas. *Satanta* was demoralized by the thought of spending the remainder of his life in prison and committed suicide four years later.

The United States was frustrated that the southern plains tribes were resisting the goal of assimilation and increased militant responses to raids in Texas. Soldiers commanded by Ronald Mackenzie attacked a Kiowa, Comanche, and Cheyenne camp in the Texas panhandle in September 1874. The troops killed only three tribe members but destroyed their ability to survive the approaching winter. The village was ruined entirely. All the food, clothing, supplies, and shelter were destroyed, and the horses were slaughtered. The tribe members were left with nothing and reluctantly returned to the Indian agency at Fort Sill. All the tribes surrendered by April 1875, and the fighting on the southern plains finally ended.

FORCED ASSIMILATION

The Kiowa begrudgingly settled on the reservation. Most settled on the northern half of the reservation to stay as far as possible from the agency at Fort Sill. The government built ten houses for the chiefs, but the chiefs refused to abandon their tipis. Finally, they agreed to live in homes in exchange for trade goods, but they quickly returned to their tipis. Only nine houses stood on the Kiowa and Comanche reservation by 1886.

The government tried to make the Kiowa farm, but the tribe rejected the idea. The land

itself was poorly suited for farming anyway due to soil quality and the arid nature of the region. The government supplied the tribe with cattle to make them ranch, but the tribe rejected that idea, too. The Kiowa continued to hunt, although the bison were near extinction on the southern plains. Texas Rangers murdered and scalped a Kiowa in 1879. This provoked a party of Kiowa to kill a Texan. Soon after the incident, Congress made it illegal for any Kiowa to leave the reservation, which catalyzed an end to the Kiowa way of life.

The government increased the pressure on the Kiowa to assimilate, lowering food rations to levels that caused starvation. Euro-American farmers and ranchers pushed for Kiowa and Comanche reservation land to be opened for non-tribal settlement by the 1880s. Some ranchers illegally used tribal land, and others tried to lease it. The Kiowa continually refused to lease any of their land, but some Comanche agreed to lease land to the Euro-American ranchers.

Kiowa children were forced to attend schools. Some children were captured and placed in boarding schools far from the reservation. The schools cut the children's hair and banned the wearing of traditional clothing, the use of the Kiowa language, and any traditional religious practices. Children were not allowed to see their parents or any other tribal members. Boys were taught to farm, and girls were taught Euro-American domestic skills. These schools were centers designed to annihilate Kiowa culture and resembled internment camps. Many schools were surrounded by barbed wire to prevent escapes. Three Native American boys, who had been beaten and whipped by the schoolmaster, escaped in 1891 only to freeze to death in a blizzard. A measles outbreak occurred in 1892, killing more than 220 children. Afflicted children were sent back to their families, which quickly spread the illness across the reservation.

DANCING MEMORY

The Kiowa continually resisted assimilation. One of the most critical components of retaining Kiowa identity was the Sun Dance. The tribe still holds an annual Sun Dance to preserve its culture and renew the bonds of the tribal members. On the reservation, the Sun Dance evolved to become a performance of memory. As the bison disappeared, the Sun Dance was threatened. It was canceled in 1882, 1884, and 1886 when the hunters could not bring back any bison. The last Sun Dance was held in 1887, using purchased bison. The new Indian agent, E. E. White, banned the Sun Dance ritual on the reservation in 1888.

The disappearance of the bison was the most challenging fate for the tribe to accept. Kiowa culture revolved around the bison herds. Without the bison, the Kiowa could hardly be Kiowa. In despair over the loss of the herds, the tribe started to embrace new rituals and ideas that promised resurrection and the return of the bison. A former warrior, *Datekan*, constructed a medicine tipi to bring back the bison in 1882. A Kiowa named *Paingya* professed that he could resurrect the dead in 1887, but when he could not raise his son from the dead, belief in his claims dwindled. A Paiute medicine man named *Wovoka* from Nevada claimed he knew of

a way to see the return of the bison and the disappearance of Euro-Americans. His teachings evolved into the Ghost Dance movement.

The Kiowa learned the Ghost Dance from an Arapaho named Sitting Bull. The Ghost Dance movement was spread from the Paiute of Nevada to tribes across the northern and southern plains. It had reached the Kiowa by the early 1890s. Sitting Bull brought devotees into a great trance where they could see their dead kin in another realm, where the bison still roamed and traditional tribal life endured. The Kiowa sent a descendent of *Gui-pago* named *A'piatan* to investigate the validity of the Ghost Dance. *A'piatan* first traveled north to observe the Sioux and then visited *Wovoka* in Nevada. *Wovoka* told *A'piatan* that the Ghost Dance ritual had lost its power because other tribes had changed it. When *A'piatan* returned to his people, he testified against the Ghost Dance, and most Kiowas stopped following the ritual as they had learned it from Sitting Bull.³

Note: Most of the preceding sections of this report detailing the history of the Comanche and Kiowa Tribes were copied directly from articles online in Kansapedia, the encyclopedia of Kansas history produced and located at the website of the Kansas Historical Society, with their permission. We are grateful to them for granting permission to use this information. Please visit their website: <https://www.kshs.org/>

PART 2: THE LEGAL AND POLITICAL HISTORY OF THE KIOWA, COMANCHE, AND APACHE NATIONS FROM 1850 – 1975

For the Indian Nations, the genocidal acts seemed unrelenting, with new challenges facing them daily for over 70 years. From 1840 to 1910, their fight continued. The treaties that were supposed to bring peace became a series of blatant lies, racism, and hatred, and at every turn, the losses grew exponentially with every article in the treaty. Article 1, you give up your land; Article 2, you will become a farmer; Article 3, we will take your children and put them in boarding schools; and when nothing was left, they promised that God would love them if they became civilized and white.

Despite the atrocities, the people never gave up. The men and women of the three Native Nations became some of the greatest warriors ever known. They valiantly fought every step of the way. Their most incredible legacy was that they would not surrender to the corrupt and dishonest people without honor who were trying to destroy them.

Treaties that were supposed to be the supreme law of the land were trivialized, manipulated contracts meant to bind sovereign nations with solemn promises. Those solemn promises became stolen land and a legacy of deceit. Contracts by law were meant to serve only those who legally signed the documents, not so for Indians. In many cases, the Indian agents produced Indians who were compliant and agreeable to every demand of those agents and became the signers. Those who signed did not just bind themselves to the treaties but often whole nations.

REVIEW OF TREATIES MADE WITH NATIVE NATIONS

The following is a review of each one of the treaties that the three Native Nations signed in good faith. The standard for evaluating the content of treaties was supposed to be that the American Indian signing the treaty understood the document, and any complex issues were to be interpreted as the Indians would have understood them. In some cases, the interpreters hired by the U.S. government acted maliciously, distorting the contents of the treaties to benefit themselves and their cronies.

We will review each of the treaties and provide an interpretation of what the Indian people were expecting when they signed the document.

FORT ATKINSON TREATY OF 1853

The treaty was designed to allow immigrants to migrate across Indian land. The Indians imagined a narrow, two-wheeled track that did minor damage to their land. In reality, that two-wheeled track would become miles wide and destroy wildlife, such as buffalo, and the land itself.

The treaty language was designed so that the U.S. would control all aspects of the Indians' lives. The U.S. government, as a sovereign, took away the sovereignty of the Indian People and asserted its authority over them. After each article, I offer a comment reflecting the alternative view of the treaty, with biased criticisms and witticisms.

TEXT AND COMMENTARY: FORT ATKINSON TREATY

Articles of a treaty made and concluded at Fort Atkinson, in the Indian Territory of the United States of America, on the 27th day of July, anno Domini eighteen hundred and fifty-three, between the United States of America, by Thomas Fitzpatrick, Indian agent, and sole commissioner, duly appointed for that purpose, and the Camanche [sic], and Kiowa, and Apache tribes or nations of Indians, inhabiting the said territory south of the Arkansas River.

ARTICLE 1. Peace, friendship, and amity shall hereafter exist between the United States and the Camanche [*sic*] and Kiowa, and Apache tribes of Indians, parties to this treaty, and the same shall be perpetual.

Comment: *We know that never happened.*

ARTICLE 2. The Camanche [*sic*], Kiowa, and Apache tribes of Indians do hereby jointly and severally covenant that peaceful relations shall likewise be maintained amongst themselves in future; and that they will abstain from all

hostilities whatsoever against each other and cultivate mutual good-will and friendship.

Comment: *It is hard to believe this language would be in a contract between sovereign Nations.*

ARTICLE 3. The aforesaid Indian tribes do also hereby fully recognize and acknowledge the right of the United States to lay off and mark out roads or highways—to make reservations of land necessary thereto—to locate depots—and to establish military and other posts within the territories inhabited by the said tribes; and also to prescribe and enforce, in such manner as the President or the Congress of the United States shall from time to time direct, rules and regulations to protect the rights of persons and property among the said Indian tribes.

Comment: *The Indian Nations understood they were consenting to a road or highway no wider than the width of a wagon-wheel track. Instead, the road was sometimes up to two miles wide, destroying all the timber, scaring off the game, and polluting the land. So much for the protection clause which was inserted in the organic acts that created territories that were designed to prevent wrongdoing. The gold rush, beginning in 1858 to Colorado, created havoc on the trails, and the treaty became unenforceable. The treaty became a farce with no protection against the invasion.*

ARTICLE 4. The Camanche [*sic*], Kiowa, and Apache tribes, parties as before recited, do further agree and bind themselves to make restitution or satisfaction for any injuries done by any band or any individuals of their respective tribes to the people of the United States who may be lawfully residing in or passing through their said territories; and to abstain hereafter from levying contributions from, or molesting them in any manner; and, so far as may be in their power, to render assistance to such as need relief, and to facilitate their safe passage.

Comment: *This is an example of a unilateral expectation that should have never been in a document as critical as a treaty. And when it was violated, it was most often because the invaders were not following the laws such as the Indian Trade and Intercourse Act of 1834.*

ARTICLE 5. The Camanche [*sic*], and Kiowa, and Apache tribes of Indians, parties to this treaty, do hereby solemnly covenant and agree to refrain in the future from warlike incursions into the Mexican provinces, and from all depre-

dations upon the inhabitants thereof; and they do likewise bind themselves to restore all captives that may hereafter be taken by any of the bands, war-parties, or individuals of the said several tribes, from the Mexican provinces aforesaid, and to make proper and just compensation for any wrongs that may be inflicted upon the people thereof by them, either to the United States or to the Republic of Mexico, as the President of the United States may direct and require.

Comment: *This article is the most offensive, as one sovereign does not and should not have the power to control or interfere with the relationship of another sovereign nation. This should have never been in a treaty document.*

ARTICLE 6. In consideration of the foregoing agreements on the part of the Camanche [*sic*], and Kiowa, and Apache tribes, parties to this treaty—of the losses which they may sustain by reason of the travel of the people of the United States through their territories—and for the better support, and the improvement of the social condition of the said tribes—the United States do bind themselves, and by these presents stipulate to deliver to the Camanche [*sic*], Kiowa, and Apache tribes aforesaid, the sum of eighteen thousand dollars per annum, for and during the term of ten years next ensuing from this date, and for the additional term of five years, if, in the opinion of the President of the United States, such extension shall be advisable; the same to be given to them in goods, merchandise, provisions, or agricultural implements, or in such shape as may be best adapted to their wants, and as the President of the United States may designate, and to be distributed amongst the said several tribes in proportion to the respective numbers of each tribe.

Comment: *The phrase “by these presents” connotes a bribe. Notice that the bribe includes an inducement to become farmers (agricultural equipment). This type of language in a contract is patronizing and inappropriate.*

ARTICLE 7. The United States do moreover bind themselves, in consideration of the covenants contained in the preceding articles of this treaty, to protect and defend the Indian tribes, parties hereto, against the committal of any depredations upon them, and in their territories, by the people of the United States, for and during the term for which this treaty shall be in force, and to compensate them for any injuries that may result therefrom.

Comment: *I could not find any evidence in the annual Indian Appropriations Acts during these years where there was compensation for losses from treaty violations. We know from the historical reports that this was the beginning of the wholesale slaughter of Buffalo and other game.*

ARTICLE 8. It is also stipulated and provided, by and between the parties to this treaty, that should any of the Indian tribes aforesaid violate any of the conditions, provisions, or agreements herein contained, or fail to perform any of the obligations entered into on their part, then the United States may withhold the whole part or a part of the annuities mentioned in the sixth article of this treaty, from the tribe so offending, until, in the opinion of the President or the Congress of the United States, proper satisfaction shall have been made, or until persons amongst the said Indians offending against the laws of the United States shall have been delivered up to justice.

Comment: *This kind of language strikes at the heart of an unjust relationship. One Indian committed an illegal action, and the whole Nation is held responsible. Applying a judicial requirement of this nature is unacceptable in a relationship between sovereign Nations.*

ARTICLE 9. It is also consented to and determined between the parties hereto, that the annuities to be given on the part of the United States, as provided in the sixth article of this treaty, shall be delivered to the said Indian tribes collectively, at or in the vicinity of Beaver Creek, yearly, during the month of July in each year, until some other time and place shall have been designated by the President of the United States, in which event the said Indian tribes shall have due notice thereof, and the place of distribution which may be selected shall always be some point within the territories occupied by the said tribes.

Comment: *When the Comanche and Kiowa arrived at the designated site for annuity distribution, they were extremely cautious and upset. The invasion of illegal immigrant interactions caused outbreaks of smallpox and cholera.*

ARTICLE 10. It is agreed between the United States and the Camanche [sic], Kiowa, and Apache tribes of Indians that, should it at any time hereafter be considered by the United States as a proper policy to establish farms among and for the benefit of said Indians, it shall be discretionary with the President, by and with the advice and consent of the Senate, to change the annuities herein provided for, or any part thereof, into a fund for that purpose.

In witness whereof, the said Thomas Fitzpatrick, Indian Agent, and sole commissioner on the part of the United States, and the undersigned chiefs and headmen of the Camanche [sic] and Kiowa, and Apache tribes or nations, have hereunto set their hands, at Fort Atkinson, in the Indian Territory of the United States, this twenty-seventh day of July, A.D. eighteen hundred and fifty-three.

Comment: *Thomas Fitzpatrick, Indian agent and commissioner on behalf of*

the United States, was most responsible for this fiasco. If this treaty followed the pattern of the Treaty of Fort Laramie 1851, we could assume that the “chiefs and leaders” were not selected by their bands but followed the practice perfected by Thomas Fitzpatrick during the negotiations of the Fort Laramie Treaty. (He forced the Lakota to choose one leader when there were 22 separate Tiyospayes. The Tiyospayes resisted and demanded that their governing unit’s leader represent them. Fitzpatrick overruled this in favor of the “one leader for all” practice of the U.S. political system.)

TEXT AND COMMENTARY: TREATY WITH THE COMANCHE AND KIOWA, 1865⁴

Articles of a treaty made and concluded at the council-ground on the Little Arkansas River eight miles from the mouth of said river, in the State of Kansas, on the eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-five, by and between John B. Sanborn, William S. Harney, Thomas Murphy, Kit Carson, William W. Bent, Jesse H. Leavenworth, and James Steele, Commissioners on the part of the United States, and the undersigned chiefs and head-men of the several bands of Comanche Indians specified in connection with their signatures, and the chiefs and head-men of the Kiowa tribe of Indians, the said chiefs and head-men by the said bands and tribes being thereunto duly authorized.

ARTICLE 1. It is agreed by the parties to this treaty that hereafter perpetual peace shall be maintained between the people and Government of the United States and the Indians parties hereto, and that the Indians parties hereto shall forever remain at peace with each other and with all other Indians who sustain friendly relations with the Government of the United States. For the purpose of enforcing the provisions of this article, it is agreed that in case hostile acts or depredations are committed by the people of the United States, or by the Indians on friendly terms with the United States, against the tribe or tribes or the individual members of the tribe or tribes who are parties to this treaty, such hostile acts or depredations shall not be redressed by a resort to arms, but the party or parties aggrieved shall submit their complaints, through their agent, to the President of the United States, and thereupon an impartial arbitration shall be had under his direction, and the award thus made shall be binding on all parties interested, and the Government of the United States will in good faith enforce the same.

And the Indians parties hereto, on their part, agree, in case crimes or other

violations of law shall be committed by any person or persons members of their tribe, such person or persons shall, upon complaint being made in writing to their agent, superintendent of Indian affairs, or to other proper authority, by the party injured, and verified by affidavit, be delivered to the person duly authorized to take such person or persons into custody, to the end that such person or persons may be punished according to the laws of the United States.

Comment: *The correct analysis of this article would be to do an incident report on Indian lives lost, camps destroyed, and other military actions that impacted the Tribes. Conversely, a similar unbiased incident report would compare the casualties and acts of aggression by Indians.*

ARTICLE 2. The United States hereby agree that the district of country embraced within the following limits, or such portion of the same as may hereafter from time to time be designated by the President of the United States for that purpose, viz: commencing at the northeast corner of New Mexico, thence south to the southeast corner of the same: thence northeastwardly to a point on main Red River opposite the mouth of the North Fork of said river: thence down said river to the 98th degree of west longitude: thence due north on said meridian to the Cimaronne [*sic*]river: thence up said river to a point where the same crosses the southern boundary of the State of Kansas: thence along said southern boundary of Kansas to the southwest corner of said State: thence west to the place of beginning, shall be and is hereby set apart for the absolute and undisturbed use and occupation of the tribes who are parties to this treaty, and of such other friendly tribes as have heretofore resided within said limits, or as they may from time to time agree to admit among them, and that no white person except officers, agents, and employés of the Government shall go upon or settle within the country embraced within said limits, unless formally admitted and incorporated into some one of the tribes lawfully residing there, according to its laws and usages. The Indians parties hereto on their part expressly agree to remove to and accept as their permanent home the country embraced within said limits, whenever directed so to do by the President of the United States, in accordance with the provisions of this treaty, and that they will not go from said country for hunting purposes without the consent in writing of their agent or other authorized person, specifying the purpose for which such leave is granted, and such written consent in all cases shall be borne with them upon their excursions, as evidence that they are rightfully away from their reservation, and shall be respected by all officers, employés, and citizens of the United States, as their sufficient safeguard and protection against injury or damage in person or prop-

erty, by any and all persons whomsoever. It is further agreed by the Indians parties hereto, that when absent from their reservation, they will refrain from the commission of any depredations or injuries to the person or property of all persons sustaining friendly relations with the Government of the United States; that they will not while so absent encamp, by day or night, within ten miles of any of the main travelled routes or roads through the country to which they go, or of the military posts, towns, or villages therein, without the consent of the commanders of such military posts, or of the civil authorities of such towns or villages, and that henceforth they will and do hereby, relinquish all claims or rights in and to any portion of the United States or territories, except such as is embraced within the limits aforesaid, and more especially their claims and rights in and to the country north of the Cimaronne [*sic*] River and west of the eastern boundary of New Mexico.

Comment: *It is noted that over 39 million acres are within the external boundary of this reservation. Additionally, the clause conferring inordinate controlling power on the U.S. and its agents—such as requiring permission from a foreign entity or its representative (e.g., an Indian agent) in order for citizens of the other sovereign nation to go hunting—is ludicrous. The vagaries of the future location of the reservation are unacceptable in a legal document. This entire article is suspect.*

ARTICLE 3. It is further agreed that until the Indians parties hereto have removed to the reservation provided for by the preceding article, in pursuance of the stipulations thereof, said Indians shall be and they are hereby, expressly permitted to reside upon and range at pleasure throughout the unsettled portions of that part of the country they claim as originally theirs, which lies south of the Arkansas River, as well as the country embraced within the limits of the reservation provided for by the preceding article, and that they shall and will not go elsewhere, except upon the terms and conditions prescribed by the preceding article in relation to leaving said reservation: *Provided*, That the provisions of the preceding article in regard to encamping within ten miles of main travelled routes, military posts, towns, and villages, shall be in full force as to the privileges granted by this article: *And provided further*, That they, the said Indians, shall and will at all times, and without delay, report to the commander of the nearest military post the presence in or approach to said country of any hostile band or bands of Indians whatever.

Comment: *These ridiculous requirements are restrictive and should have no place in a legal contract. These terms are based on control, much like a person in prison or captivity.*

ARTICLE 4. It is further agreed by the parties hereto that the United States may lay off and build through the reservation, provided for by Article 2 of this treaty, roads or highways as may be deemed necessary, and may also establish such military posts within the same as may be found necessary, in order to preserve peace among the Indians, and in order to enforce such laws, rules, and regulations as are now or may from time to time be prescribed by the President and Congress of the United States for the protection of the rights of persons and property among the Indians residing upon said reservation, and further, that in time of war such other military posts as may be considered essential to the general interests of the United States may be established: *Provided, however;* That upon the building of such roads, or establishment of such military posts, the amount of injury sustained by reason thereof by the Indians inhabiting said reservation shall be ascertained under direction of the President of the United States, and thereupon such compensation shall be made to said Indians as, in the judgment of the Congress of the United States, may be deemed just and proper.

Comment: *There is little or no evidence that an invader was ever charged with violating this treaty or that anyone among the Tribes received compensation.*

ARTICLE 5. The United States agree that they will expend annually, during the period of forty years, from and after the ratification of this treaty, for the benefit of the Indians who are parties hereto, and of such others as may unite with them in pursuance of the terms hereof, in such manner and for such purposes as, in the judgment of the Secretary of the Interior for the time being, will best subserve their wants and interests as a people, the following amounts, that is to say, until such time as said Indians shall be removed to their reservations, as provided for by article two of this treaty, an amount which shall be equal to ten dollars per capita for each person entitled to participate in the beneficial provisions of this treaty; and from and after the time when such removal shall have been accomplished, an amount which shall be equal to fifteen dollars per capita for each person entitled as aforesaid. Such proportion of the expenditure provided for the by this article as may be considered expedient to distribute in the form of annuities shall be delivered to said Indians as follows, viz: One-third thereof during the spring, and two-thirds thereof during the autumn of each year.

For the purpose of determining from time to time the aggregate amount to be expended under the provisions of this article, it is agreed that the number entitled to its beneficial provisions the coming year is four thousand and that an

accurate census of the Indians entitled shall be taken at the time of the annuity payment in the spring of each year by their agent or other person designated by the Secretary of the Interior, which census shall be the basis on which the amount to be expended the next ensuing year shall be determined.

Comment: *This treaty was only in place for two years before everything changed for the Tribes.*

ARTICLE 6. The Indians parties to this treaty expressly covenant and agree that they will use their utmost endeavors to induce that portion of the respective tribes not now present to unite with them and accede to the provisions of this treaty, which union and accession shall be evidenced and made binding on all parties whenever such absentees shall have participated in the beneficial provisions of this treaty.

Comment: *Many of the two Nations' leaders did not sign this treaty.*

In testimony whereof, the said Commissioners on the part of the United States, and the chiefs and headmen of the said bands of Camanche [sic] Indians and of the Kiowa tribe of Indians, hereinbefore referred to, and designated in connection with their signatures, have hereunto subscribed their names and affixed their seals on the day and year first above written.

Comment: *To add insult to injury, the ink needed to be drier on this treaty, which had scarcely been ratified for a few weeks, before the United States government decided to create a new standard for peace.*

THE NEFARIOUS PLAN OF TERMINATION, RELOCATION, AND EXTERMINATION

Congress passed legislation on July 20, 1867, to create the Great Peace Commission of 1867-1868. This Commission was charged with removing and relocating Indian people from their homeland, putting them in belts of land along the Missouri River, or forcibly removing them to Indian Territory in Oklahoma. The Congressional intent of the Great Peace Commission of 1867-68 was to open a swath of land across the central part of the United States where the invasive settlers could occupy the territory, free from being harassed by Indians.

Shortly after the Treaty of the Little Arkansas was completed, Congress began a plan to exterminate or relocate Indians on the Plains. The following is taken directly from the Indian Claims Commission, Docket 257, August 9, 1971:

Opinion on Motion of the Kiowa, Comanche, and Apache Tribes of Indians for Summary Judgment of Recognized Title and Defendant's Alternative Motion to Dismiss Claim for Failure to Prosecute:⁵

On March 29, 1867, the Congress finally passed, (*Globe*, 451, 452) and the President signed, S. No. 83,⁶ which then became Chapter XIII, Laws of 1867, 15 Stat. 7.

Section 6 thereof provided in part as follows:

And all laws allowing the President, the Secretary of the Interior, or the commissioner of Indian affairs to enter into treaties with any Indian tribes are hereby repealed, and no expense shall hereafter be incurred in negotiating a treaty with any Indian tribe until an appropriation authorizing such expense shall be first made by law.⁷

On July 8, 1867, the Senate adopted the following resolution:

Resolved, That the Secretary of the Interior communicate to the Senate any reports made to his Department by commissioners heretofore appointed, or by superintendent or agents of Indian tribes, together with any other authentic and reliable information in his possession, touching the origin and progress of existing Indian hostilities on the frontier.

He will further communicate to the Senate, as far as he can, the extent of the disaffection among the Indian tribes; whether they are waging war as tribes or as individuals, and if as individuals, what disposition has been or is likely to be made of the friendly Indians formerly belonging to what are known as hostile bands, and that he make such suggestions in his judgement will lead to the most speedy termination of pending hostilities and prevent Indians wars in the future. *Globe*, 507.⁸

On July 12, 1867, the Senate received a report from the Commissioner of Indian Affairs accompanied by a letter of transmittal from the Acting Secretary of the Department of the Interior. This letter stated that the report was in compliance with the Senate's resolution of July 8. *Globe*, 623.⁹

The following paragraphs are part of the report:

To make peace it is, in my opinion, necessary, first, that the part of an act approved March 29, 1867, repealing "all laws allowing the President, the Secretary of the Interior, or the Commissioner of Indian Affairs to enter into treaties with any Indian tribe" shall be repealed; otherwise there can be no

*binding agreement for peace made with the hostile Indians, ***.*

That the policy indicated may be of universal application, I would respectfully recommend that a large territory be set apart south of the southern line of Kansas and west of Arkansas, including the present Indian Territory and the country known as the staked plains of Texas, and so much of New Mexico as may be necessary, for the exclusive occupation and ultimate home of all the Indians south of the Platte and east of Arizona, and for the inauguration of this plan in reference to said territory and said Indians. I respectfully ask that an appropriation be made of \$100,000.

I recommend that all necessary provisions be made by Congress to procure at once that portion of Texas, or so much thereof as may be necessary, lying between the western boundary of the Indian Territory and the eastern boundary of New Mexico. Globe, 624.

The report was signed by N.G. Taylor, the then Commissioner of Indian Affairs. Globe, 624.¹⁰

On July 16, 1867, Senator Henderson of Missouri, the author of the July 8 resolution and Chairman of the Senate Committee on Indian Affairs, introduced S. No. 136, a bill to establish peace with certain hostile tribes. *Globe*, 655.¹¹

This information is taken directly from Commissioner Jerome K. Kuykendall, Chairman of the Indian Claims Commission, dissent pp. 123-131, to have the favorable findings on behalf of the Tribes dismissed. The issue continued when Kuykendall continued his objection, and an appeal was filed in U.S. Claims Commission Court. It shows that the Peace Commission of 1867-68 intended to relocate Indians. (Additional information regarding the ICC can be found later in this report.)

Note: The information contained above is proof that Congress, the Senate, and the Commissioner of Indian Affairs all conspired to illegally construct a plan to remove and relocate American Indians under the guise of treaties.

PROCEEDINGS OF THE GREAT PEACE COMMISSION OF 1867-68

The following is testimony from the Indian leaders of the Comanche and Kiowa Tribes in the Proceedings of the Great Peace Commission of 1867-68, and are the transcripts of the actual testimony of the Indians and the Peace Commissioners.

Testimony of Ten Bear, Comanche:

If the Texans had kept out of my country, there might have been peace. But that which you now say we must live on is too small. The Texans have taken away

*the places where the grass grew the thickest and the timber was the best. Had we kept that we might have done the thing you ask. But it is too late. The white man has the country which we loved and we only wish to wander on the prairie until we die.*¹²

Testimony of Satanta, Kiowa:

I have heard you intend to settle us on a reservation near the Mountains. I don't want to settle there. I love to roam over the wide prairie, and when I do it, I feel free and happy, but when we settle down, we grow pale and die. ...

*A long time ago, this land belonged to our fathers, but when I go up to the river, I see a camp of soldiers, and they are cutting wood down, or killing my buffalo. I don't like that and when I see it, my heart feels like bursting with sorrow. I have spoken.*¹³

Testimony of Senator Henderson, Peace Commissioner:

It was agreed that the Comanche and Kiowa could hunt up the river. The Commission was still willing. They did not like the medicine lodges of the whites, but did like the buffalo, the Chase, and the ways of the fathers. That was not objected to, but the buffalo will not last forever. They were disappearing, and the Indians must know it. When that day comes, the Indian must leave his father's road, or suffer and probably die.(Laughter.) The change might make them better. The Commission wanted them to live and offered a way. ...

It was proposed to make that home on the Red River and around the Wichita mountains. The papers had been prepared. There they wanted a house built.

The next day they wanted the chiefs to meet them at the camp and sign the paper.

Medicine Lodge Creek, Kansas

*October 20th, 1867.*¹⁴

The above text sections provide an example of how the negotiations were handled. Indian people said what they wanted, and the Commissioners ignored it and continued to promote the relocation and potential extermination of the people. The Commissioners had no intention of letting the Kiowa and Comanche Tribes stay in their homeland. Treaty “negotiations” were a myth. The notion that treaties were to be determined or interpreted from an Indian perspective or viewpoint was belied and corrupted by the actual treaty creation process, which was rigged (with specific congressional directions) to achieve the preordained goal of removal and relocation. We must remember that this was a time when the United States was expanding, and every move west decimated Indian People and forced them from their land.

TEXT AND COMMENTARY: TREATY WITH THE KIOWA AND COMANCHE, 1867¹⁵

[*Note by the Department of State.*—The words of this treaty which are put in brackets with an asterisk are written in the original with black pencil, the rest of the original treaty being written with black ink.]

Articles of a treaty and agreement made and entered into at the Council Camp, on Medicine Lodge Creek, seventy miles south of Fort Larned, in the State of Kansas, on the twenty-first day of October, one thousand eight hundred and sixty-seven, by and between the United States of America, represented by its commissioners duly appointed thereto, to wit, Nathaniel G. Taylor, William S. Harney, C. C. Augur, Alfred S.[H.] Terry, John B. Sanborn, Samuel F. Tappan, and J. B. Henderson, of the one part, and the confederated tribes of Kiowa and Comanche Indians, represented by their chiefs and headmen, duly authorized and empowered to act for the body of the people of said tribes, (the names of said chiefs and head-men being hereto subscribed,) of the other part, witness:

ARTICLE 1. The Government of the United States desires peace, and its honor is here pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indians, subject to the authority of the United States and at peace therewith, the tribes herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws, and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as, in his judgment, may be proper; but no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs and the Secretary of the Interior; and no one sustaining loss, while

violating or because of his violating, the provisions of this treaty or the laws of the United States, shall be re-imbursed therefor.

Comment: *This language is ludicrous. A contract between sovereigns should neither instruct nor order another sovereign to give up its rights or authority related to processing crimes.*

ARTICLE 2. The United States agrees that [addition in pencil*] the following district of country, to wit: commencing at a point where the Washita River crosses the 98th meridian, west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence, due west to the north fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian-line, and thence south, on said meridian-line, to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said river, in the middle of the main channel thereof to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian-line, to the place of beginning, shall be and the same is hereby set apart for the absolute and undisturbed use and occupation of the tribes herein named, and for such other friendly tribes or individual Indians as, from time to time, they may be willing [phrase addition A underlined made in pencil*] with the consent of the United States to admit among them; and the United States now solemnly agrees that no persons except those herein authorized so to do and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservation in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation, for the use of said Indians.

Comment: *The leaders of Kiowa and Comanche rejected these boundaries and the location, yet they were inserted in the document. This is a perfect example of a document that had been previously constructed and had no direct Indian input into the final document. Promoting a document as a peace treaty when it is a tool of destruction of the Tribes is a travesty of justice.*

ARTICLE 3. If it should appear from actual survey or other satisfactory examination of said tract of land, that it contains less than one hundred and sixty acres of tillable land, for each person, who at the time may be authorized to reside on it under the provisions of this treaty, and a very considerable

number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart for the use of said Indians, as herein provided, such additional quantity of arable land adjoining to said reservation, or as near the same as it can be obtained, as may be required to provide the necessary amount.

Comment: *The leaders' testimony clearly stated that they did not want to be farmers and wanted the land they occupied at the time. The content can only be interpreted as forced assimilation.*

ARTICLE 4. The United States agrees at its own proper expense to construct at some place, near the centre of said reservation, where timber and water may be convenient, the following buildings, to wit: A warehouse or store-room for the use of the agent, in storing goods belonging to the Indians, to cost not exceeding fifteen hundred dollars: an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a school-house or mission-building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding five thousand dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular saw mill, with a grist-mill and shingle-machine attached: the same to cost not exceeding eight thousand dollars.

Comment: *Testimony shows that the leaders of these two Native Nations did not want any of this.*

ARTICLE 5. The United States agrees that the agent for the said Indians in the future shall make his home at the agency-building: that he shall reside among them, and keep an office open at all times, for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property, he shall cause the evidence to be taken in writing and forwarded, together with his findings to the Commissioner of Indian Affairs, whose decision, subject to the revision of the Secretary of the Interior, shall be binding on the parties to this treaty.

Comment: *The Tribes and their leaders never asked for or agreed to this. This is an example of the boilerplate language included in the 1867-68 treaties.*

ARTICLE 6. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the “land book” as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family so long as he or they may continue to cultivate it. Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon, be entitled to the exclusive possession of the same as above directed. For each tract of land so selected, a certificate, containing a description thereof and the name of the person selecting it, with a certificate indorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the “Kiowa and Comanche land book.” The President may, at any time, order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of settlers, in their improvements, and may fix the character of the title held by each. The United States may pass such laws, on the subject of alienation and descent of property and on all subjects connected with the government of the said Indians on said reservations, and the internal police thereof, as may be thought proper.

Comment: *This was not in the documented proceedings and should not be in the treaty.*

ARTICLE 7. In order to insure the civilization of the tribes, entering into this treaty, the necessity of education is admitted, especially by such of them as are or may be settled on said agricultural reservations; and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than twenty years.

Comment: *This was not discussed.*

ARTICLE 8. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid not exceeding in value twenty-five dollars. And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil a second blacksmith shall be provided, together with such iron, steel, and other material as may be needed.

Comment: *None of these things were discussed, and this verifies my remarks about the “myth” of treaty negotiations.*

ARTICLE 9. At any time after ten years from the making of this treaty, the United States shall have the privilege of withdrawing the physician, farmer, blacksmiths, carpenter, engineer, and miller herein provided for; but, in case of such withdrawal, an additional sum thereafter of ten thousand dollars per annum shall be devoted to the education of said Indians, and the Commissioner of Indian Affairs shall, upon careful inquiry into the condition of said Indians, make such rules and regulations for the expenditure of said sum as will best promote the educational and moral improvement of said tribes.

Comment: *The contents of this treaty are all fabrications by the US commissioners and their staff. None of this is in the treaty transcripts.*

ARTICLE 10. In lieu of all sums of money or other annuities provided to be paid to the Indians, herein named, under the treaty of October eighteenth, one thousand eight hundred and sixty-five, made at the mouth of the “Little Arkansas,” and under all treaties made previous thereto, the United States agrees to deliver at the agency-house on the reservation herein named, on the fifteenth day of October of each year, for thirty years, the following articles, to wit:

Clothing. For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, pantaloons, flannel shirt, hat, and a pair of home-made socks. For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, and twelve yards of calico, and twelve yards of “domestic.”

For the boys and girls under the ages named, such flannel and cotton goods as may be needed, to make each a suit as aforesaid, together with a pair of

woolen hose for each; and in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent, each year, to forward him a full and exact census of the Indians on which the estimates from year to year can be based; and, in addition to the clothing herein named, the sum of twenty-five thousand dollars shall be annually appropriated for a period of thirty years, to be used by the Secretary of the Interior in the purchase of such articles, upon the recommendation of the Commissioner of Indian Affairs, as from time to time the condition and necessities of the Indians may indicate to be proper; and if at any time within the thirty years it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the tribes herein named, Congress may by law change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named; and the President shall, annually, detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

Comment—This article was probably worthless as the Indian Department's corruption at this time was notorious, and most items were either stolen or of poor quality and unusable.

ARTICLE 11. In consideration of the advantages and benefits conferred by this treaty and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside of their reservation, as herein defined, but they yet reserve the right to hunt on any lands south of the Arkansas [addition in pencil*] river [*sic*], so long as the buffalo may range thereon in such numbers as to justify the chase, [end of ink handwriting, it continues in pencil to the end of page*]and no white settlements shall be permitted on any part of the lands contained in the old reservation as defined by the treaty made between the United States and the Cheyenne, Arapahoe, and Apache tribes of Indians at the mouth of the Little Arkansas, under date of October fourteenth, one thousand eight hundred and sixty-five, within three years from this date:*) and they, [the said tribes,*] further expressly agree—

Note: Report author's clarifications and explanatory titles for the following sections and articles are set in italics and enclosed in brackets.

[*Agreements as to Railroads*]

1st. That they will withdraw all opposition to the construction of the railroad

now being built on the Smoky Hill River, whether it be built to Colorado or New Mexico:

2d. That they will permit the peaceable construction of any railroad not passing over their reservation as herein defined:

[Emigrants and Emigrant Travelers]

3d. That they will not attack any persons at home, nor travelling, nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith:

[Women and Children]

4th. They will never capture or carry off from the settlements white women or children.

5th. They will never kill nor scalp white men nor attempt to do them harm.

[Pacific Railroad, Wagon Roads, etc.; Damages for Crossing These Reservations]

6th. They withdraw all pretence of opposition to the construction of the railroad now being built along the Platte River and westward to the Pacific Ocean; and they will not, in future, object to the construction of railroads, wagon-roads, mail-stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribes whatever amount of damage may be assessed by three disinterested commissioners, to be appointed by the President for that purpose; one of said commissioners to be a chief or head-man of the tribes.

7th. They agree to withdraw all opposition to the military posts now established in the western Territories.

Comment: *This was a hollow promise as the military at this time was killing buffalo to force the Indians onto reservations. None of the items listed besides the right to hunt was discussed with Tribal leaders.*

ARTICLE 12. *[No treaty for cession of reservation to be valid unless, etc.]* No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III [VI] of this treaty.

Comment: *Although this was not discussed, the article came back to haunt the federal government and was part of the claims related to the Jerome*

Commission. The federal government was never able to gather three-fourths of the adult males and have them sign an agreement to change the conditions of this treaty.

ARTICLE 13. [*In employing farmers, etc., preference to be given to the Indians, if, etc.*] The Indian agent, in employing a farmer, blacksmith, miller, and other employes herein provided for, qualifications being equal, shall give the preference to Indians.

Comment: *The Indians did not want any of these jobs or positions; they only wanted to be left alone and stop the invasion in their homelands.*

ARTICLE 14. [*United States to furnish physicians, teachers, etc.*] The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

Comment: *It is easy to look back and see how harmful these unapproved commitments were to the Indian people. We only have to look at the horrendous record of the murderous boarding schools.*

ARTICLE 15. It is agreed that the sum of seven hundred and fifty dollars be appropriated for the purpose of building a dwelling-house on the reservation for "Tosh-e-wa," (or the Silver Brooch,) the Comanche chief who has already commenced farming on the said reservation. And the sum of five hundred dollars annually, for three years from date, shall be expended in presents to the ten persons of said tribes who in the judgment of the agent may grow the most valuable crops for the period named.

Comment: *Without question, this needs to be considered illegal and a bribe.*

ARTICLE 16. [*Reservation to be permanent home of tribes.*] The tribes herein named agree, when the agency-house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the lands south of the Arkansas River, formerly called theirs, in the same manner, subject to the modifications named in this treaty, as agreed on by the treaty of the Little Arkansas, concluded the eighteenth day of October, one thousand eight hundred and sixty-five.

Comment: *They never wanted any of these things, and to have them in a treaty was dishonest. In testimony of which, we have hereunto set our hands and seals on the day and year aforesaid.*

N. G. Taylor, President of Indian Commission.

(It is important to note that almost all Peace Commissioners were military officers.) The history of Treaties with Indians was and is dishonest, filled with fraudulent actions, bribes, iniquitous deceptions, and reprehensible actions. The treaties executed in 1867 and 1868 were the worst.

THE JEROME COMMISSION AND INDIAN ALLOTMENT ACT

The Tribes suffered from the invaders who aggressively violated them. From every quarter, they faced the dominating oppression of the onslaught of aggressors killing their precious livelihood, the buffalo, unscrupulously stealing the land, and the military at every turn trying to exterminate them. These horrific conditions continued as the Tribes attempted to reconcile to the loss of their homelands and adapt to a new way of living.

This new way of living brought new challenges from outside. The land secured for them in the treaty had now become some of the most desirable land in Oklahoma. A new war (or series of wars) was waged by the invaders who wanted that treaty land for themselves. And they figured out a way to get it. The Jerome Commission was created by President Benjamin Harrison, and by 1892, the commission coerced the Kiowa, Comanche, and Apache Tribes to agree to have their reservation lands allotted. Most Kiowas opposed the allotment of their reservation. The commission supposedly obtained 456 signatures from among the 562 males to more than meet the three-fourths requirement of the 1867 Medicine Lodge Treaty. Many people said they did not sign or were deceived by the voting or signature gathering process. The Jerome Commission agreement was created in 1892, but did not get congressional approval until 1901. When the Jerome Commission's agreement was finally passed, the document had been altered, and almost every article was changed. The changes were never taken back to the Tribes for approval. This was a contentious issue for the Tribes that the Kiowas fought against to preserve their land.

KIOWA – LONE WOLF V. HITCHCOCK

Reservation lands were divided into separate plots distributed to individual tribe members under the General Allotment Act of 1887. Once each tribal member was allotted a plot, the remaining land was sold, and the profits went into a trust for the tribe that the federal government managed. The idea behind the act was that allotment would force the tribal members to farm by limiting any ability to hunt, and the rest of the reservation could be opened to eager settlers. The Kiowa were vehemently opposed to the act. Chief Lone Wolf, a nephew of *Gui-pago*, threatened to go to war if the act were forced on the tribe.

Congress formed a three-member commission in 1889 to negotiate allotments for 20 reser-

vations in Oklahoma. The commission was known as the Jerome Commission after its chairman, David Jerome. The commission arrived at Fort Sill to negotiate allotment of the Kiowa and Comanche reservation in 1892. The commission proposed that the land be divided into 160-acre plots, but the Medicine Lodge Treaty of 1867 called for 320-acre plots if the land were ever to be divided. The Medicine Lodge Treaty also stipulated that three-fourths of the tribe's men needed to approve the sale of any tribal land. Eventually, the Jerome Commission obtained enough signatures to approve allotment, although *A'piatan*, the opposition leader, accused the commission of fraud.

It took eight years for Congress to ratify the Jerome Agreement. During that time, thousands of Euro-American settlers illegally rushed into Kiowa lands. These settlers robbed the reservation's stone, timber, and minerals while establishing farms. Small towns started to develop as the Rock Island Railroad line was finished through the northern part of the reservation. Congress approved a modified version of the Jerome Agreement in 1900, but Lone Wolf was still determined to fight it. He hired an attorney to contest the Jerome Agreement, and an injunction was filed against the Secretary of the Interior, Ethan Hitchcock. The federal courts ruled against Lone Wolf.

Lone Wolf continued his lawsuit against Hitchcock. The case went before the United States Supreme Court. The court ruled in favor of the United States in 1903. *Lone Wolf v. Hitchcock* set a troubling precedent against the rights of Native Americans. The justices determined that Congress had authority over tribes and that any rights or powers reserved for a tribe by agreements like the Medicine Lodge Treaty could be eliminated by Congress at any time. The justices also held that Congress's motives could not be examined in court. Tribal concerns were deemed a political issue as opposed to a legal issue. *Lone Wolf v. Hitchcock* set a dark precedent; tribes had no legal recourse to defend their rights against Congress.¹⁶

The following is an excellent description of the *Lone Wolf v. Hitchcock* case provided by C. Blue Clark in *Encyclopedia of the Great Plains*, edited by David J. Wishart:

Lone Wolf v. Hitchcock

Lone Wolf v. Hitchcock (1903) was a U.S. Supreme Court decision that abrogated Native American treaty rights and underscored congressional supremacy (called plenary power) over Indian affairs. Plaintiffs Lone Wolf and several other Indians had sued the defendant, Interior Secretary Ethan Allen Hitchcock, to block allotment of the Kiowa-Comanche-Apache Reservation in southwestern Oklahoma. Kiowa claims, including the condition of article 12 of the Medicine Lodge Treaty (1867) forbidding cession of Indian land unless approved by three-fourths of the tribe's male members, were sidestepped in the Court's opinion. In 1900 Congress had approved a modified 1892 allotment agreement that did not contain sufficient signatures, even with forgeries, and Lone Wolf and his

supporters sought judicial relief. Their case had been rejected in federal court in Washington dc [sic] and in the District of Columbia Court of Appeals.

The decision was the culmination of a century-long congressional assault on Indian land and treaty rights. The Court held that congressional guardianship over Indian reservation property could not be limited by an Indian treaty and cited its own decree in *Cherokee Nation v. Georgia* (1831) that Congress possessed complete administrative power over Indian tribal property. Referring to the earlier decision in *United States v. Kagama* (1886), the justices upheld congressional supremacy over the nation's "Indian wards," called paternalism, ruling that congressional plenary authority over Indian relations was not subject to judicial oversight or review, since such congressional power was political.

The Court's decision had reverberations far from Lone Wolf's own reservation, which was quickly allotted. The unallotted "surplus" was opened to a tide of non-Indian settlers, who rapidly engulfed tribal lands. Although Indian land division had been under way before the opinion, the judicial pronouncement spurred a frenzy of allotment. Indian land loss increased, not least on reservations on the Northern Great Plains. Indian Office abuses of Indian land, resources, and rights increased in the ensuing years. Indian nations sank deeper into the mire of wardship, subject to virtually unlimited federal authority. The plenary doctrine of Lone Wolf dominated federal Indian law and Indian policy for more than half a century. The decree set back the efforts of humanitarian reformers, who advocated modifications in Indian policy. At the same time in the nation's history, the United States acquired its first overseas possessions, following the conclusion of the Spanish-American War. U.S. authorities viewed local island independence in the same light as that of continental Native American tribal independence, as the attitudes visible in the Lone Wolf litigation were applied narrowly to the new possessions.

Although officially repudiated in the judicial system since 1980 (*United States v. Sioux Nation of Indians*), the doctrine periodically has been resurrected in defense of denying Indian rights, such as in Indian religious freedom rights and those dealing with sacred sites. The Indian trust funds scandal at the end of the 1990s, involving Bureau of Indian Affairs mismanagement of Indian trust money, was also a long-postponed but direct outgrowth of the Lone Wolf decision and its attendant bureaucratic mind-set.¹⁷

The most challenging aspect of the concept of plenary power is to accept that it was created without a sound legal foundation and virtually no precedence. It was spun "out of thin air" and so destructive that it caused many Indian people to gasp at its force of power. Its source of

authority remains tenuous at best and destructive at its worst. Walter Echo-Hawk, a legal star in Indian Country, called it (*Lone Wolf v. Hitchcock*) one of the worst Supreme Court cases ever.¹⁸

As a result of these land theft tactics, more than 50,000 settlers invaded the Tribal land and laid claim to it, despite the Treaties' promises that the land would be protected forever (or not!). The unscrupulous actions of the Jerome Commission finally got their day in court. The forum for justice would be the adversarial and unpropitious Indian Claims Commission.

KIOWA – 20TH CENTURY

The allotment process began in 1906 and was halted in 1936. During that time, the tribe lost a significant amount of land in southeastern Oklahoma. Over 65 percent of individual tribal land holdings were lost to Euro-American settlers, and roughly 93 percent of tribal-owned pasture lands were lost. The region was struck by draughts in the 1920s, and much of the tribe fell into poverty. Without hunts, war, or a sustainable economy to create opportunities for members of the tribe to gain status, the Kiowa's traditional ranked society disintegrated, which caused a weakened tribal political organization. Although oil and gas were discovered on tribal lands, it did not help the tribe's economic issues. Mining leases were first offered in 1914, but the lease fees were too small compared to the oil companies' profits for the tribe to realize benefits. The federal government also controlled the leasing, and most of the funds were kept by the government to be handled by the agency.¹⁹

PEYOTE AND THE NATIVE AMERICAN CHURCH

Christian missionaries arrived at the southern border of the Kiowa and Comanche reservation around 1880, but Christianity was not as popular with the Kiowa as the Native American Church. The use of peyote, a cactus with hallucinogenic properties, was central to the Native American Church. Native populations in Mexico had been using peyote in rituals for hundreds of years, but its ritual use started to spread north in the late 19th century. When peyote is ingested as part of a ritual, it brings about a vision. Much like the Ghost Dance, peyote rituals spread across numerous tribes during a time of great stress. Leaders from the Kiowa, Otoe, and Arapaho met in 1918 and decided to incorporate the Native American Church to preserve traditional religious observances and culture. Through incorporation, the Native American Church was legally registered and fell under the protection of the First Amendment of the United States Constitution.²⁰

KIOWA SIX

The Kiowa experienced a cultural revival through art in the 20th century. Monroe Tsatoke, Spencer Asah, Stephen Mopope, Jack Hokeah, Bou-ge-tah Smokey, and James Auchiah enrolled in art school at the University of Oklahoma in 1928. These artists became known as the Kiowa Six. They recorded many essential rituals and legends of the tribe. They established a modern school for Native American painting, which produced a path for future Kiowa and members of other tribes to follow.²¹

ROOSEVELT ADMINISTRATION AND FEDERAL POLICY CHANGES

John Collier became Commissioner of Indian Affairs under President Franklin D. Roosevelt in the early 1930s. Collier proposed legislation known as the Indian Reorganization Act or the Wheeler-Howard Act. The act would end allotment, open new lands to be purchased for ownership by tribes, expand educational opportunities for tribes and create a fund for industrial and agricultural development in tribal communities. The act was also designed to establish a system to create elected tribal governments and extend legal protection to expressions of tribal culture and religion. Collier and members of the Commission on Indian Affairs met with the Kiowa on March 20, 1934.

The Kiowa lived in rural areas, isolating them enough to retain cohesion between tribe members. With few tribe members owning large properties, the tribe had limited contact with the Bureau of Indian Affairs, which tended to focus on wealthy Native Americans with more property. Because of these factors, the federal government had little influence over the tribe. Kiowa leaders opposed the act because they worried change could weaken the tribe. Regardless of the tribe's opposition, Congress passed the act in 1934, and it was extended to Native Americans in Oklahoma in 1936 as the Oklahoma Indian Welfare Act.²²

OKLAHOMA INDIAN WELFARE ACT

The Oklahoma Indian Welfare Act ceased allotment and the diminishing of Kiowa lands. Some lost lands were restored. The act also established tribal governments. The Inter-tribal Business Committee became a body for the expression of tribal views. Committee members were elected democratically by the tribes and not appointed by the federal government. New laws were passed to protect ethnic identity and the development of tribal economies. A federal fund was created to loan money for the development of Native American businesses and was managed by the Inter-tribal Business Committee. The tribe benefited from the changes made by the act. The Great Depression and Dust Bowl conditions in Oklahoma slowed recovery, but things were improving. More decisive political leadership in the tribe was developing; youths had access to better education, and rural economic development plans were in

motion. Kiowa cultural renewal reached a new peak in the 1950s. After World Wars I and II, honored veterans gained membership in new versions of traditional warrior societies.²³

POLITICAL DIVIDE AND ESCAPING A NEW THREAT TO THE TRIBE

The tribe had two major political factions that surfaced in the 1950s. Both factions were deeply rooted in Kiowa history and were even linked to the descendants of previous political rivals. Progressives were more often the descendants of Kiowa who had converted to Christianity. They frequently worked for the government and tried to maintain power through redistributing wealth. The conservatives were more likely associated with the Native American Church. Some were even the keepers of sacred medicine bundles. They were concerned with the preservation of Kiowa traditions. They managed to hold greater authority over the tribe. Both factions were opposed to President Dwight D. Eisenhower's administration's termination policy. The new policy attempted to end all programs benefiting tribes. Designated tribes lost federal recognition during this period and were no longer eligible for federal assistance. The progressive leaders worried that termination was inescapable. The conservatives supported the use of delay tactics. The Kiowa eventually avoided termination by refusing to cooperate with the federal government.²⁴

THE INDIAN CLAIMS COMMISSION²⁵ 1946-1975

The Indian Claims Commission (ICC) was inundated with numerous claims from various tribes. For the Kiowa, Comanche, and Apache tribes, the Indian Claims Commission (ICC) was a paradoxical enigma. The ICC was supposed to bring a permanent solution to the dishonorable and unconscionable²⁶ land thefts that caused many Nations to lose their sacred homelands. For the Kiowa, Comanche, and Apache tribes of Oklahoma, the process was complex, lengthy, and filled with angst.

KIOWA LITIGATION AND THE INDIAN CLAIMS COMMISSION

The Indian Claims Commission was created by Congress in 1946 to investigate claims made by Native Americans of prior injustices committed against them to seize their lands. The commission handled the settlement of claims where the United States violated treaties between the federal government and one or more tribes. The Kiowa were among the first tribes to bring their claims before the commission. This was their opportunity to fight the *Lone Wolf v. Hitchcock* decision and the Medicine Lodge Treaty violations committed by the Jerome Commission. Testimony before the Indian Claims Commission commenced in 1949. The litigation was drawn out and complicated. The federal government argued that any financial award to

the Kiowa for damages by the Jerome Agreement should be allocated to offset 1.5 million dollars in damages, which would be charged to the tribe for depredations against Euro-American settlers. The Kiowa were victorious despite facing many delays and the standing Supreme Court ruling in *Lone Wolf v. Hitchcock*. The Indian Claims Commission resolved that offsets for depredations were contrary to the purpose of the proceedings. The Kiowa's legal victory established a new precedent for claims in favor of other Native American litigants. The tribe was awarded nearly 2 million dollars by the commission in 1960 after 11 years of litigation.²⁷

Although the Kiowa, Comanche, and Apache filed several earlier claims, their first dealings with the ICC began on April 9, 1951.²⁸ The Kiowa, Comanche, and Apache Tribes of Indians and their attorneys appeared before the Indian Claims Commission. The ICC issued the "*Opinion of the Commission*," which stated that the Tribes had a legitimate claim based on the "unconscionable" acquisition evidence, and issued an opinion that the case could move forward. On that same date, the ICC issued a *Findings of Fact*.²⁹ The findings of fact were a review of the detailed information related to the case. It was stipulated that the land involved had to do with lands acquired through the Medicine Lodge Treaty of October 21, 1867.³⁰ The Tribe's claim was for \$16,268,664.

The purpose of the claims was to deal with the actions of the Jerome Commission. In March 1887, Congress passed the Allotment Act, sometimes called the Dawes Act, and the President appointed a Commission to negotiate an agreement with the Tribes for cessions of the land in the ceded area. The Jerome Commission had concluded a previous agreement on October 6, 1892, whereby the tribes ceded all their lands to the United States. As part of the agreement, the tribes reserved land that would be allotted to all adults.³¹ The commissioners sent the agreement to the president for confirmation in Congress. Congress took no action for eight years and finally passed an altered version of the agreement.³² Congress altered almost every article in the Jerome Agreement.³³ The alterations worked against the tribes and were prompted by wealthy cattle owners and other landgrabbers. The magnitude of these legal contract or document alterations should have been considered fraud.³⁴

On December 13, 1955, the ICC issued another finding in the *Additional Findings of Fact*, which concluded that the ceded area consisted of 2,033,583 acres, with a fair market value of \$4,067,166 as of June 6, 1900. The determined value of \$2.00 per acre was well below that of other land in the area. The award was further reduced by \$2,000,000, which had already been paid to the tribe. The final award was for \$2,067,166. The award per acre was ridiculous; it was far below the value of other nearby land selling for as high as \$11.00 per acre. Undervaluation was a common complaint about the ICC proceedings. The federal government immediately filed an appeal of the award. This is ironic because if the tribe accepted the award, they would not have an opportunity to appeal at any time. Section 22 of the legislation that created the Indian Claims Commission is as follows:

*Section 22 of the Indian Claims Commission Act provides that (1) payment of any claim, after a determination under the Act, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy, and (2) a final determination against a claimant made and reported in accordance with the Act shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy.*³⁵

This is a perfect example of two sets of rules, one for the tribes and another for the government.

The federal appeal for Docket 32 was heard in the United States Court of Federal Claims.³⁶ The federal government lost the appeal, and the final determination of the award was ruled in favor of the Tribes. The Amended Final Award for Docket No. 32 happened on March 29, 1957, and the Tribes had prevailed. However, the opinion noted that the Tribes did not have the right to claim compounding annually accruing 5% interest or receive land back. This would not end the Tribes' claims before the nefarious Indian Claims Commission.

DOCKETS 257 AND 259-A³⁷

The original proceeding was the *Opinion on Motion of the Kiowa, Comanche, and Apache Tribes of Indians for Summary Judgement of Recognized Title and Defendants' Alternative Motion to Dismiss Claim for Failure to Prosecute*. The Indian Claims Commission had a request from the Tribes to summarily include land from the Treaty of the Little Arkansas River on October 18th, 1865. That treaty was between the United States, the Kiowa, and the Comanche tribes of Indians.³⁸ This tract of land contained approximately 39,680,000 acres located in the northwestern part of the present state of Texas, the western portion of Kansas, the southeastern corner of Colorado, and officially designated areas 510 and 511 on map 57 of the Royce documents.³⁹

The defendant, the United States government, opposed the motion for summary judgment based on several issues, including *res judicata*⁴⁰ and a series of convoluted arguments related to the work of the Congress and the Peace Commission of 1867-68. I have earlier noted that the work of the 1867 "Peace Commission" was not, by legal definition, a peace commission but a "war and relocation commission."

The other ICC commissioners did not agree to the government's dissent. They granted the motion for summary judgment, including the interests of the Tribes, who were granted "recognized title" to Royce areas 510 and 511. This appears to be a significant win for the tribes, except that, again, one of the commissioners filed a dissent and sought resolution in the Court of Claims. The request for action by the Court of Claims was rejected and sent back to the ICC commissioners to resolve the dispute. In the final judgment,⁴¹ the ICC ordered a settlement of

\$35,060,000 on the Kiowa, Comanche, and Apache Tribes of Indians. The award was fully approved in the April 17, 1974 final proceedings.⁴² This is the largest award ever provided in an ICC settlement award.

Although these ICC claims profess to be equitable and just and to have resolved all the issues that the tribes could have raised, this is not accurate. The victory became a historical anomaly when compared to other non-Indian claims. In addition, there has never been an accounting of the loss of the economic value of the buffalo. Recent data shows that the value of the buffalo today would be \$48 billion.⁴³ The settlement did not award any land back to the Tribes, and yet, in other land cases not involving Indians, the standard has always been to return the land if it was proven to be stolen. In all tort cases of this nature, there is usually also an award of interest of 5% compounded annually from the time the land was stolen. This alone would have helped repair the injury(ies) visited upon the Tribes. Compounding interest of 5% of \$35 million today would be worth over 12 billion dollars. The inability to get back land, in the language used extensively by the ICC, is defined as “unconscionable.” Jurisprudence is usually founded on facts, but there appears to be an exception for the United States in cases of stolen land. When they have exacerbated past wrongdoings by not returning purloined land to its rightful owners, there are (or have been) no consequences. The net result is an injustice for Indians.

Additional claims on behalf of the Tribes could include illegal occupation or trespass, as noted in the 1834 Trade and Intercourse Act.⁴⁴ Trespass in any form should be dealt with in these cases.

The total would be astronomical if every illegal invader had been fined \$1,000 and removed from the land as Article 1 of the 1834 law required. So, in the end, the Kiowa, Comanche, and Apache’s victory was insubstantial, and the settlement was negligible when juxtaposed against the value of other land in the area being sold for \$11.00 per acre while the tribes received \$1.00 an acre. This causes great consternation about the fairness and systemic bias of Western, U.S. legal processes and the courts, especially a board like the Indian Claims Commission. Moreover, the ICC Act Section 22 bar from future litigation is onerous and discriminatory.

The people of the land, who should have been the landlords and rejoicing in the wealth of their land, have had to continue to struggle to survive. Incredibly, these people have survived to modern times; this is a true testament that the Creator has a future for them.

LATE 20TH CENTURY

Progressives cooperated with the Bureau of Indian Affairs’ initiative to encourage youths to relocate to cities under the Eisenhower administration. The progressives felt that the youths

could make a better life outside of the rural areas of the former reservation. A significant number of Kiowas relocated to California. Nearly 150 Kiowa were living around San Francisco, Oakland, and San Jose by 1964. Kiowa families in the San Francisco area had comparable income to non-Native American families. Conditions on former reservation lands in Oklahoma in the 1970s were challenging. Unemployment rates were as high as 23 percent in 1970. Approximately 80 percent of Kiowa families lived in homes without standard plumbing or electricity. Only half of the tribe's high school students graduated.

As of 1989, the majority of tribal members live on former reservation lands in Oklahoma. The tribe has made efforts to preserve its culture and identity. Dances are still held, and stories are recorded so that they can be passed on to future generations. The Kiowa language is taught to youths, who are encouraged to attend college. Art continues to be an outlet for cultural preservation. The most significant challenges to the Kiowa today remain economic in nature.⁴⁵

ENDNOTES

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- 25 The Indian Claims Commission (ICC) was one of the most despicable tools that could have been used to try to destroy Indian rights and especially “land rights.” Please read Irredeemable America, the Indians’ Estate and Land Claims, edited by Imre Sutton, University of New Mexico Press, 1985.
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Kiowa Apache: In-depth Analysis of Migrations and Traditional Ties to Colorado

INTRODUCTION

The Plains Apache People, otherwise known as the Kiowa Apache, speak a language known by the same name. Kiowa Apache is one of the six languages that make up the Apachean branch of Athapaskan. The other five languages of this branch include the Lipan, Navajo, Western Apache, Chiricahua-Mescalero, and Jicarilla languages. Scholarship and debate that surrounds the origin of the Plains Apache derives from two historical narratives that backtrack to their migration from Canada. The first is the notion that the Plains Apache came into the Great Basin region and later into the Southwest alongside other Athapaskan speaking people and were pushed back north into the plains by the Comanche. The second is that the Plains Apache migrated through the Great Plains and allied themselves with the Kiowa people who lived in the Black Hills of western South Dakota and eastern Wyoming in the early eighteenth century. Thereafter, the Plains Apache followed the Kiowa into the southern plains in approximately 1780.

The earliest recorded accounts of the Kiowa Apache can be traced through documentation of established contact with the Spanish in northern New Mexico. Their in-depth knowledge of the vast prairie land allowed the Kiowa Apache to traverse great distances across New Mexico, Texas, and Kansas. Their common relationship with different tribes allowed the earliest Plains Apache to adapt to and influence their environment by adopting material goods and cultural practices from elsewhere. In 1542, the Spanish conquistador Coronado referred to the Plains Apache as “Querechos,”¹ noting they were known to inhabit the eastern borders of the plains on the Arkansas River (in present-day Kansas) and would trade with the Pueblos in

New Mexico. This led to the accumulation of considerable wealth and affluence for the Plains Apache, allowing them to maintain control over vast amounts of land in the southern plains. The earliest records of the Plains Apache support this, and indicate they were intermediaries between Spanish traders and the other Plains tribes.

“All the Apaches living on the eastern margin of the Rocky Mountains were bison hunters, but unlike others, the ancestors of the Plains Apache were nomads who did not practice horticulture, lived in hide teepees, and used dogs as pack animals.”²² Unlike their distant Apache relatives who lived in New Mexico, the Plains Apache relied extensively on their knowledge of buffalo hunting, using it to their advantage in providing an important material resource to Pueblo and Spanish markets that relied on it. In other words, “having adopted a fully nomadic lifeway, the ancestral Plains Apache would have had both a larger surplus of bison products to trade and a greater motivation to enter Pueblo markets.”²³ Notably, the introduction of the horse to the Plains Apache people augmented their well-established influence in trade and commerce with the Spanish. This in turn allowed various Plains Apache bands to trade with allied tribes in the southern plains and from as far away as Arikara villages in the north.⁴

Importantly, by 1720 the arrival of the Comanche into the southern plains resulted in the disruption of Apache control over the southern plains. At the same time, French traders began to establish relationships with tribes such as the Caddo, Wichita, and Pawnee. Apache influence over the southern plains soon faded as family groups and bands of Plains Apache, under “pressure of the Comanche intrusion by moving east into New Mexico or south to join the Lipan, the balance of them moved north to South Dakota, closer to the villages of the Arikara, with whom they traded.”⁵

By 1750, the Comanches had pushed most of the remaining Apaches from the plains. The Comanches then clashed with the Utes, which solidified their control over the central southern plains. In other words, the Comanche “fought a war with their (Plains Apache) former allies, the Utes, and had made themselves masters of the southern plains.”⁶ By the turn of the century in 1801, the Plains Apache had closely intermingled and aligned themselves with the “Nations of the North”⁷—the Kiowa people—cementing the close association begun in the eighteenth century. The Plains Apache thus became known as the Kiowa Apache.

By the 1830s and 1840s, the Kiowa Apache, along with the Kiowa and Wichita tribes, were a part of a treaty negotiated in 1837 at Fort Gibson to establish a peaceful relationship with the United States. By the years 1846 to 1848, the Kiowa Apache were known to have alliances with the Mescalero Apache and the Cheyenne and Arapaho.⁸

By 1850 and 1855, the Plains Apache, along with the Kiowa and Comanche, were then part of a treaty negotiation in Fort Atkinson, Kansas, that brought the United States into their territories via forts and military outposts. Moreover, this treaty guaranteed protection over emigrant trails that the United States would establish. In return, the United States promised to pay to all tribes signing the treaty, including the Kiowa Apache, “the sum of eighteen thousand

dollars per annum.”⁹ The treaty was ratified on July 27, 1853, and signed by Plains Apache headmen Poor Wolf, Poor Bear, Prairie Wolf, and Cigar.

Engaging with the earliest records of the Kiowa Apache broadens the scope of historical Kiowa Apache narratives, centering their perspective and acknowledging the decision-making the tribal leadership of the Plains Apache made to protect the tribe. Furthermore, conceptualizing the migration pattern of the Plains Apache provides historical context about the vast range the Plains Apache traveled through and occupied; this kind of engagement with documented or otherwise recorded material challenges Western and Eurocentric narratives of the past. Take, for example, the notions of territorial land claims and boundaries. In terms of the territorial claims in Colorado, the Kiowa Apache have historical ties to the Rocky Mountains, the Front Range, and the southeastern part of the state. Through the signing of the Medicine Lodge Treaty of 1867, the Kiowa Apache have a share in part of the treaty annuities and land acknowledgment of their territorial claim alongside the Kiowa and Comanche.

That being said, broadening the historical narrative of the Kiowa Apache tracks a political strategy implemented by the tribe’s chiefs to maintain friendly relations with larger local tribes and the United States. “In general, the Plains Apache allied with nomadic peoples who enjoyed amicable relations with Euro-American authorities and tended to avoid associations with peoples who were engaged in hostilities with Euro-Americans.”¹⁰ This strategy can be traced back to the early years when the Plains Apache utilized trade with the Spanish to attain influence and serve as mediators between local tribes and Europeans. Compared to other neighboring tribes like the Kiowa and Comanche, the Kiowa Apache were smaller in terms of population size. They therefore formed group decisions with an eye toward investing in the tribe’s future survival, and pursued a strategy based on maintaining friendly relations with bigger military powers in the central plains.

HISTORY FROM 1860s TO 1880s

In the period spanning the 1860s to the early 1870s, the Kiowa Apache experienced an era of rapid change and transition as European American settlers encroached on Colorado, Kansas, and present-day Oklahoma. With the legions of settlers pouring into the territories of larger and more powerful tribes such as the Cheyenne, Arapaho, and Comanche, tensions arose as the United States sought to expand its territory via railroads, military outposts, and the settlement/colonization of Indigenous lands and people. By the early 1860s, the Kiowa Apache were considered a band under the Kiowa Nation, their alliance formed because of the necessity of securing protection for the tribe.

For the Kiowa Apache, their relationship with the Cheyenne and Arapaho was in direct response to the rapidly escalating tension between Indigenous Nations and White Anglo settlers. On November 25, 1864, during the First Battle of Adobe Walls, a detachment of soldiers under

the command of Christopher “Kit” Carson attacked a village of Kiowa and Comanche in Northern Texas. “His men wanted to find the Indians, punish them, and return to their comfortable winter accommodations.”¹¹ The Kiowa Apache sought to defend themselves and suffered a tremendous loss during the attack. Kit Carson’s brutal attack was an attempt to diminish the fighting capacity of the Kiowa and Comanche, forcing them to come to terms with the United States and settle onto the reservation in Oklahoma. After the first Battle of Adobe Walls the Kiowa Apache, to maintain peace and avoid open conflict with the United States, broke their relationship/alliance with the Kiowa and soon associated themselves with the Cheyenne and Arapaho.

During this time the Kiowa Apache traversed the southeastern part of Colorado, frequently in tune with the migration pattern of the bison herds and using known river trails throughout the vast plains. But as the pressure of Western expansion mounted on the Great Plains, growing numbers of Anglo American settlers violated the territorial sovereignty and claims held by many tribes. “Cherokees pushed Osages, Osages pushed Kiowas, Kiowas pushed Cheyennes, Cheyennes pushed Pawnees.”¹² With the collection of tribes being pushed away from their traditional homelands in the east, traditional enemies soon found themselves near each other. “The Great Plains had become a dumping ground for all the tribes of the east, a condition which the old inhabitants resented and fought.”¹³

During the 1860s, the Central Great Plains became widely contested as tribes fought for territorial claims, and by the end of the Civil War the United States focused its attention on settling the West and making way for the railroads. Tragic events such as the Sand Creek Massacre that occurred on November 29, 1864, caused the Cheyenne and Arapaho to retaliate by burning and attacking white settlements along the eastern part of Colorado, including the town of Julesburg. Through the extreme tension and violence, the Kiowa Apache navigated between alliances with the Cheyenne and Arapaho, and with the Kiowa and the Comanche. Although the four tribes were against the United States, the Kiowa Apache, in smaller bands under different chiefs, were known to associate with tribes who were friendlier to Anglo American settlers and who disagreed with raids that were conducted by the Kiowa and the Comanche.

TREATY OF THE LITTLE ARKANSAS/HORSE CREEK TREATY, 1865

Within the next year, 1865, the representatives of the United States and U.S. military leaders met with the tribal leadership of the Cheyenne, Arapaho, Kiowa, and Comanche to hammer out a new treaty, which became known as the Little Arkansas Treaty. Plains Apache tribal chiefs attending the treaty negotiations included Iron Shirt, Poor Bear, Old Fool Man, The Crow, The Wolf Sleeve, and The Chief, who signed on behalf of the Kiowa Apache. The objective of the Little Arkansas Treaty was to establish a reservation in “Indian Territory” (present-day Oklahoma) for the Cheyenne, Arapaho, Kiowa, and Comanche. The treaty included

promises of annuities to be paid to the survivors of the Sand Creek Massacre, and provisions to formally remove the Cheyenne and Arapaho from the Colorado Territory. “In addition to annuities listed at twenty dollars per person for forty years, the Little Arkansas Treaty included reparations for the ‘gross and wanton outrages’ of the Sand Creek Massacre.”¹⁴

Moreover, the treaty called for the end of hostilities between all tribes while the United States would respect the agreement regarding annuities paid to the Cheyenne and Arapaho, and give acres of land to the chiefs and survivors of the massacre. “The treaty also promised 320-acre grants within the new reservation to the leaders of bands killed at Sand Creek, including Black Kettle, and 160-acre grants to ‘each other person of said bands made a widow, or who lost a parent,’ in the massacre.”¹⁵ For its time, the Treaty of Little Arkansas was in part a response to the public outcry against the brutality perpetrated and witnessed at the Sand Creek Massacre, and showed a willingness by the United States to compensate and make amends for the series of wrongdoing and dishonorable conduct on the part of the military on the Great Plains.

For the tribal leadership of the Kiowa Apache, the experience of the First Battle of Adobe Walls and continual attacks from various war parties led the leadership of the Plains Apache to advocate for and broker peace alongside the Cheyenne and Arapaho. As the Kiowa and Comanche continued their raids into Texas, the Kiowa Apache sought to break away from their alliance with the Kiowa to seek a peaceful relationship with the United States and to display a willingness to settle on the newly established reservation in Oklahoma. The treaty recognized the Kiowa Apache as an equal entity among the tribes present at the treaty negotiations:

Whereas the Apache Indians, who have been heretofore confederated with the Kiowa and Comanche tribes of Indians, are desirous of dissolving said confederation and uniting their fortunes with said Cheyenne and Arapahoes; and whereas the said last named tribes are willing to receive among themselves on an equal footing with the members of their own tribes, the said Apache Indians.¹⁶

It acknowledged that the Kiowa Apache wanted a part of the annuities shared with the Cheyenne and Arapaho by the United States and showed in part the Kiowa Apache intentions to peacefully settle on the reservation for protection and the ensured survival of their tribe. In terms of the provisions and annuities promised, “[they] shall be done and performed by the United States for and on behalf of the said confederated tribes or bands of Cheyenne, Arapahoe and Apache Indians, and on their part shall be done, observed and performed to, with and for the United States in the same manner.”¹⁷ As the treaty negotiations concluded, the political strategy implemented by the Kiowa Apache reflected their motivations to stay neutral. It indicated to the larger tribes such as the Kiowa and Cheyenne that the Plains Apache would base their decision-making on the survival of their people, regardless of alliances, and would retain

their social and political sovereignty as a separate nation within the treaty agreements.

As mentioned previously, the Plains Apache always sought to maintain their distinction as a people, both culturally and politically, among the larger tribes on the central plains. Although their close relationship with the Kiowa ended after the Treaty of the Little Arkansas, the Kiowa recognized the Plains Apache as an autonomous entity within their Nation, which allowed them to maneuver and build relationships with other tribes. However, although the United States government allocated \$39,050 in 1866 to cover the cost of annuities promised to the tribes, the Little Arkansas Treaty was never ratified. The restitution promised to the Cheyenne and Arapaho was never delivered, and the reservation in Oklahoma was not established. “Instead of issuing that money to the individuals listed in the treaty, the Interior Department gave some of the money to the tribes and, according to a modern legal assessment, ‘returned the rest’ to the Treasury as ‘surplus.’”¹⁸

Over the next two years following the signing of the Little Arkansas Treaty, the Kiowa Apache would keep a stable relationship with the Cheyenne and Arapaho, wary of the violence inflicted upon them by the U.S. military, White settlers, and other local tribes. It thus can be inferred that the Kiowa Apache were with the Cheyenne and Arapaho in the Arkansas Valley between southeastern Colorado and Kansas,¹⁹ since they were given hunting rights in the treaty to hunt in the region.

MEDICINE LODGE TREATY, 1867

By 1867, the Kiowa Apache had been driven out of the panhandle of Oklahoma by the Comanche.²⁰ Moreover, violence continued not only in Colorado, but also in Kansas and Texas, exacerbated by the failed attempt to ratify the Little Arkansas Treaty. The U.S. government, meanwhile, created a Peace Commission to secure peace in the southern plains and to forcefully remove the Cheyenne, Arapaho, Kiowa, and Comanche to the reservation in Oklahoma.

After three years of constant conflict between the tribes and the United States, the U.S. government attempted to secure peace in Colorado and Kansas in order to make way for the development of the transcontinental railroad by creating three treaty agreements with various tribes such as the Comanche, Kiowa, Apache, Cheyenne, and Arapaho. Negotiations proceeded for two weeks as the treaty council was held in a region known as Medicine Lodge Creek. Within the treaty, the United States allocated land for the creation of two reservations set aside in the western half of Oklahoma Indian Territory. In return, the tribes would receive government rations and aid in transitioning from a nomadic to an agricultural lifestyle as the U.S. sought to assimilate the tribes. The Kiowa, Comanche, and Apache were given land in the southwestern half of Oklahoma. Meanwhile the Cheyenne and Arapaho were relocated in the northwestern half of Oklahoma and are known today as the Southern Tribes of the Cheyenne and Arapaho. According to the 1867 Treaty of Medicine Lodge Creek, the Cheyenne and Arap-

who relinquished their territorial rights and land claims to Colorado, ultimately leading to the mass exodus of the tribes from their traditional homelands.

Senator John B. Henderson created the Peace Commission that led to the Medicine Lodge Creek Treaty through a bill the U.S. Congress enacted to formulate systemic policies to secure the frontier and civilize the tribes. This commission focused on subjugating the tribes and forcing them to adopt Euro-American practices such as agriculture and to fully assimilate by becoming farmers. Rather than push the tribes farther away into an isolated area, tribes would now be forced to settle into reservations. “Now he (the American Indian) would be remodeled into a red counterpart of the whiteman—he would learn to appreciate the values of personal property, the satisfaction of pushing a plow, and the beauty of settling down forever in a wooden house enclosed by fences and cavalry patrols.”²¹

Because the Treaty of Little Arkansas in 1865 was never ratified, congressional members justified the Medicine Lodge Creek Treaty as a replacement for the terms and conditions set by the previous, unratified treaty. As the Peace Commission traveled toward Kansas, the call for a great council was heeded as General William T. Sherman “ordered the Department of the Missouri to make 50,000 rations available for the Indians who would gather at Medicine Lodge.”²²

The meeting site of Medicine Lodge Creek was located in the south part of Kansas near the border of Oklahoma; the meaning behind the name Medicine Lodge derives from the Sun Dance Arbor constructed for the annual Kiowa Sun Dance that took place weeks before the treaty council convened. The Arapahos camped near a location named “Timbered Hill.”²³ The Cheyenne were camped across the valley near the Medicine Lodge. “On the near side of the Medicine Lodge and beyond the Arapahos were the Plains Apache.”²⁴

As the treaty proceedings continued, the seven languages being spoken created a communication barrier between tribal leadership, government officials, and interpreters. With its complexities, the reporters present at the treaty council “left no evidence that they questioned the accuracy of interpretations, they had no choice but to accept the interpreters’ word.”²⁵ Despite the number of languages represented at Medicine Lodge, the Plains Apache did not have a sufficiently proficient interpreter, nor was it documented that the Kiowa Apache had a reliable interpreter speaking on their behalf. It is known that the “said Apache speeches were translated into Arapaho by an Apache-speaking member of Little Raven’s tribe.”²⁶ This brings forth the question of how much information did the leadership of the Kiowa Apache understand, and what was mistranslated? “If the tribal potentates were unable to speak or comprehend, they probably were the least confused group at Medicine Lodge—uninformed, perhaps, but not confused.”²⁷

While the Kiowa Apache leadership at the signing of the Medicine Lodge Treaty did not play a key role in the negotiations of the treaty, what remains unclear is the amount of information the headmen of the Kiowa Apache knew about the treaty. However, the terms given to

the Plains Apache were the same as the conditions given to the Kiowa and the Comanche. The treaty for the Plains Apache was signed on October 25, 1867, which confederated the Plains Apache with the Kiowa and Comanche. Throughout the articles of the treaty, the provisions promised aid to the Kiowa Apache for their transition from a nomadic hunter-gatherer to an agricultural society, in furtherance of their assimilation.

The legacy of the Medicine Lodge Treaty is the removal of Indigenous tribes from a free existence on the southern plains to stagnant life on the reservation. For the Kiowa Apache, the treaty marked the unwilling loss, under duress, of their traditional nomadic lifeways, and began their forced transition to adopting Anglo-American agriculture. At the newly established reservation in Oklahoma, the Kiowa Apache settled between Fort Cobb and Fort Sill under the leadership of Head Chief Pacer. On the part of the United States, the tribes never received any of the annuities promised.

Moreover, the loss of territory continued during the reservation era: the Kiowa, Comanche, and Kiowa Apache lost more acres of land during the tenure of the Jerome Commission, whose purpose was to dissolve tribal holdings of land and turn them into individual private property allotments. This was an effort to further the assimilation process of tribes by allocating tribal lands to non-Indians. The Jerome Commission continued the legacy of subjugation and loss of tribal sovereignty, as well as tribal members and relatives. As the Kiowa Apache adapted to life on the reservation, “by 1891, the population of the tribe numbered around 325.”²⁸

ECONOMIC LOSSES

- The Jerome Commission haggled with the Kiowa, Comanche, and Apache (KCA) leaders at the Fort Sill subagency in 1892 and offered \$2 million for approximately 2.5 million acres of surplus land.²⁹
 - Each tribal member was to receive four forty-acre tracts, totaling 160 acres.
 - Agent James F. Ranflett noted that the \$210,000 in biannual grass payments signed by Texas cattlemen in 1886 would have exceeded the 5 percent interest that KCA tribes would have made from the \$2 million offered. Furthermore, the 160 acres per person was not sufficient to sustain ranching and farming on the dry reservation land.
 - The Jerome Agreement was ratified on June 6, 1900.
 - The Medicine Lodge Treaty of 1866 allocated \$39,050 to cover the cost of annuities promised to the tribes, which the Cheyenne, Arapaho, and Apache never received.
 - The Treaty of Medicine Lodge Creek of 1867 forced the Cheyenne and Arapaho to relinquish their territorial rights and land claims to Colorado. All tribes, including the Apache, were relocated to Oklahoma.

CONCLUSION

The Plains Apache lived on the vast Great Plains with a migration pattern that stretches into the Black Hills of South Dakota and into the northern half of the Oklahoma-Texas Panhandle. Dwelling in this fluid and expansive area, the Kiowa Apache navigated through social and political unrest by building relationships and alliances with larger tribes such as the Kiowa and the Cheyenne, and served as mediators for trade between White settlers and local tribal nations. Although the Kiowa Apache traversed the Oklahoma-Texas Panhandle, their relationship to the state of Colorado is crucial in conceptualizing Indigenous migration patterns. It highlights how tribal nations understood and respected territorial boundaries before Western European notions of empires and kingdoms, and the continued fluctuation of tribal migrations and land claims throughout the Great Plains.

The methodology used to research the Kiowa Apache Nation demonstrates their tribal history includes the Rocky Mountain region and the southeastern part of Colorado, as evident in their signing of the Medicine Lodge Creek Treaty. Their story within the devastating legacy of Western expansion includes land loss, cultural loss, and the wrenching loss of human relatives. Although further historical research needs to be conducted to fully visualize the historical narrative of the Kiowa Apache, it is important to note the lack of historical records and documents that specifically pertain to the Kiowa Apache because of their small population size and their close relationships to larger tribes. Therefore, their history could be susceptible to erasure through merging the Plains Apache narrative with the histories of other tribal nations. Nevertheless, the Kiowa Apache have maintained their tribe's distinction and identity for centuries, and today they are presently known as the Apache Tribe of Oklahoma.

ENDNOTES

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- 3 Ibid., 927.
- 4 Ibid., 927.
- 5 Ibid., 928.
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- 8 Sturtevant & Krupnik, 1978, 928.
- 9 Treaty with the Comanche, Kiowa, and Apache; July 27, 1853, The Avalon Project, Yale Law School, Lillian Goldman Library.
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- 12 Jones, Douglas C., 1966, *The Treaty of Medicine Lodge: The Story of the Great Treaty Council as Told by Eyewitnesses*, 13.
- 13 Ibid.
- 14 Encyclopedia Staff, n.d.-b/2023b, Little Arkansas Treaty, in *Colorado Encyclopedia*.
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Kiowa, Comanche, and Apache Tribes of Oklahoma

Truth, Restoration, and Education Commission (TREC) Recommendations

1. It is recommended that the State of Colorado compensate the Kiowa, Comanche, and Apache Tribes of Oklahoma for pain and suffering (and/or mental distress) resulting from illegal trespass.¹
2. It is recommended that the State of Colorado compensate the Kiowa, Comanche, and Apache Tribes of Oklahoma for the water rights that they inherently owned as part of their Treaties in Colorado.²
3. It is recommended that the State of Colorado fully compensate the Kiowa, Comanche, and Apache Tribes of Oklahoma for the role of the state in the forced removal of the Kiowa, Comanche, and Apache Tribes of Oklahoma.³
4. It is recommended that the State of Colorado restore rights to the Kiowa, Comanche, and Apache for unrestricted cultural and traditional land use within the aboriginal territory, on all public lands in Colorado (federal and state), and must restore hunting and fishing rights, collecting medicine plants or any other historical culture use of the land.⁴
5. It is recommended that the State of Colorado provide monetary compensation for the use of any railway land to the Kiowa, Comanche, and Apache Tribes of Oklahoma, and when a railway is abandoned, return the land to the Kiowa, Comanche, and Apache Tribes of Oklahoma.⁵

6. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Kiowa, Comanche, and Apache Tribes of Oklahoma access to funding that is available to other counties, municipalities, and non-profits. The State of Colorado should support all efforts for the Kiowa, Comanche, and Apache Tribes of Oklahoma to protect sacred sites in Colorado.⁶

7. It is recommended that the State of Colorado no longer assess property taxes on federally recognized enrolled Kiowa, Comanche, and Apache Tribes of Oklahoma members who permanently reside in Colorado.⁷

8. It is recommended that the State of Colorado support the Kiowa, Comanche, and Apache Tribes of Oklahoma Nation in its efforts to have the Indian Claims Commission settlement opened for appeal. The Jerome Commission failed in every way; almost every article that favored the Tribes was altered before the final approval of Congress. These blatant violations cannot continue to be ignored. A wrong action by the government, no matter how long ago, needs to be corrected.⁸

9. It is recommended that the State of Colorado make special accommodations and all higher education institutions funded by state funds should provide all enrolled members of the Kiowa, Comanche, and Apache Tribes of Oklahoma tuition waivers and room and board.⁹

10. The State of Colorado should introduce legislation for an amount to be determined as a fee for all future real estate transactions to create a permanent fund to compensate the Kiowa, Comanche, and Apache Tribes of Oklahoma for their losses while simultaneously helping improve their economic standing.¹⁰

11. The State of Colorado and the Federal government should support the Kiowa, Comanche, and Apache Tribes of Oklahoma in re-establishing buffalo. The home of the Tribes served as a significant home for the southern herd of buffalo and was the primary source of food for the Tribes.¹¹

ENDNOTES

1 Beginning in 1834 with the Indian Trade and Non-Intercourse Act, invaders were prohibited from settling on American Indian Land in the West. The Kiowa, Comanche, and Apache Tribes of Oklahoma land is all located within the boundaries of the Act, and the intruders, invaders, squatters, and such moved into areas owned by the Tribes. The devastation diminished the welfare of the Kiowa, Comanche, and Apache Tribes of Oklahoma people. This violation was not corrected by any agency even when they knew the occupation was illegal.

2 As we know, water rights are inherent within Treaty rights and need not be stated. The State of Colorado has never compensated the Kiowa, Comanche, and Apache Tribes of Oklahoma for their water rights.

3 The forced removal was an act of genocide. Territorial Governor Evans failed in his duties as the Superintendent of Indian Affairs, and the state should be held liable for his actions. There must be a full investigation of acts of genocide, with each incident reported for the public record, and the victims should be compensated for the wrongful action.

4 The State of Colorado and the federal government must provide free access to any locations that the Kiowa, Comanche, and Apache Tribes of Oklahoma people used for ceremonial purposes, for collection of plants for medicinal purposes, and for hunting buffalo, which are no longer available to the people.

5 The State of Colorado's economy flourished when the railroads were the given land via the Railroad Act. At no time did the Kiowa, Comanche, and Apache Tribes of Oklahoma people benefit from these land transfers.

6 The current legislation does not allow for Tribal Nations to access GOCO (Great Outdoors Colorado) resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes. According to the US Forest Service there are over 200 sacred sites that are not currently protected.

7 The Kiowa, Comanche, and Apache Tribes of Oklahoma people who live off the reservation have a reserved right not to pay state property taxes as they are still living within their homelands. The status granted by the United States Citizenship Act in 1924 protects Kiowa, Comanche, and Apache Tribes of Oklahoma members with a protectorate clause.

8 In the reviews of the Indian Claims Commissions dockets 32, 257, and 259-A, there are significant issues with the process. The calculations to determine values were biased, and without a doubt, the issue of the final award to the Kiowa, Comanche, and Apache Tribes of Oklahoma Agreement contained unscrupulous and dishonorable dealings on the part of the United States government. In addition, the Indian Claims Commission Dockets left numerous issues unresolved. When the Tribes inserted a petition to reserve the rights for appeal, they were automatically barred by Sec. 22 of the ICC rules. This is an injustice that compels and argues for an appeal. In other ICC cases, when an ICC Commissioner (Defendant) objected to an ICC ruling, the issues were appealed to the Court of Claims. This created an opportunity to

appeal a ruling by the ICC, where no such right exists for the Tribes (Plaintiff) in ICC actions. This is inherently discriminatory, and all ICC appeals should be appealable.

9 The State of Colorado has a duty and moral responsibility to help the Kiowa, Comanche, and Apache Tribes of Oklahoma People recover from the losses associated with the sordid history and treatment of American Indians in the past. All schools in the state benefit from land that belonged to American Indians. The School Fund received 4 million acres of land in Colorado to support schools, and the Kiowa, Comanche, and Apache Tribes of Oklahoma students have yet to benefit from this resource. Every Kiowa, Comanche, and Apache Tribes of Oklahoma child should receive an exceptional educational experience with tutors and financial assistance to enhance achievement.

10 This effort would do the least harm to current Colorado residents while compensating for past wrongs and creating restorative justice.

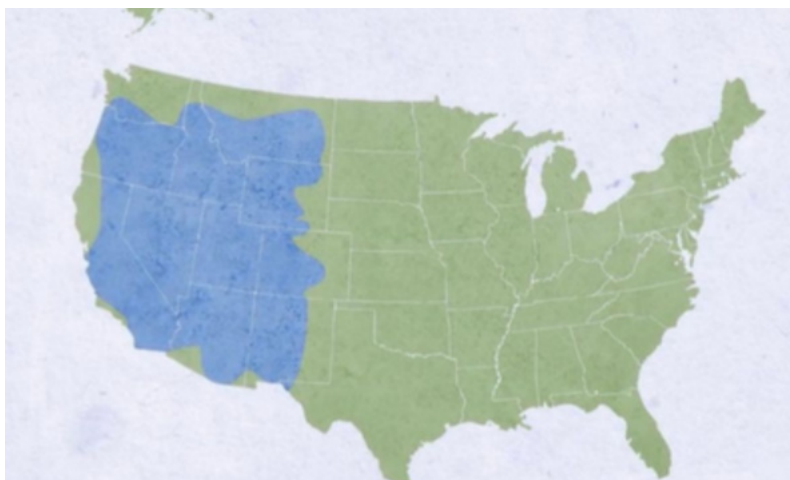
11 There were approximately five million buffalo in the southern herd. The value at today's price is calculated to be roughly 46,000,000,000 dollars.

Eastern Shoshone

Eastern Shoshone

SHOSHONEAN PRE-HISTORY

*The Shoshone hunted, traveled, traded, and settled in the area of Colorado and the surrounding states for over a thousand years. In a video titled *Who Are the Eastern Shoshone?*, Eastern Shoshone Members Darwin St. Clair, George Abeyta, and Lynette St. Clair affirm the Shoshone traditional homeland included over 16 present states, from Texas to California and also up into Canada, and that the Shoshone People have a “rich history of thousands of years” in the areas identified in the following map.¹*



Map Showing Extent of Traditional Shoshone Homeland, by Wyoming PBS, 2017 (<https://rmpbs.pb-slearningmedia.org/resource/2aef3499-1334-4e1e-ab6d-4d96ced518c7/who-are-the-eastern-shoshone/>).²

Brown's Pool (situated in or near the area now known as Browns Park and National Wildlife Refuge, which also includes Vermillion Canyon), is located in northwest Colorado. Peter Faris, in an article discussing a Shoshone Medicine Wheel recently found in the area, relays a description of the area by Marcia Tate, who writes, "an area of such moisture and richness in an arid land can be expected to have been important to Native Americans, and there is evidence of prehistoric occupation of the area as early as the Paleoindian stage, lasting to about 5,500 BC, and Archaic occupation has been found at sites throughout the region dating between 5,000 BC – AD 500."³ Deepening the Shoshones' connection to the place, Faris refers to the works of anthropologist Donald Grayson and linguist Sydney Lamb:

In northeastern Utah and northwestern Colorado, the Fremont culture was followed by the Shoshone. About 1000 years ago speakers of the family of languages known to linguists as Numic, which includes Shoshone, began a movement that originated in the southwestern Great Basin and expanded northeastward. Groups of people who spoke the Shoshone language spread up through central Nevada and across northern Utah into southern Idaho and adjacent Wyoming, according to Grayson.⁴ Sydney Lamb estimated that when encountered by Europeans these people had been in place for one thousand years or less.⁵ Later analysis based upon glottochronological data tended to support that estimate, suggesting a minimum of 700 years for the split between Panamint and Shoshone.⁶ [Archaeological evidence indicates] the Shoshone may have arrived in northwestern Colorado and succeeded the Fremont culture there around AD 1300.⁷

Still following the timeline of Shoshonean occupation of and connection with Colorado, Faris quotes J. Donald Hughes:

Two Shoshonean groups, the Wind River Shoshone and their far-ranging relatives, the Comanche, occupied a section of northern Colorado before 1800. After that date the Comanches left, but the Shoshones remained. Shoshone country included all the land north of the Yampa River, North Park, and the mountains to the Front Range north of what is now Rocky Mountain National Park.⁸

Mountain man William T. Hamilton found that during the summer of 1842, Washakie and the Shoshone People were at Fort Bridger (built as a fur trading post by Jim Bridger, mountain man, Army scout, wilderness guide, and explorer). Hamilton described a trip where he and his party stayed in the area for two weeks, and then traveled with Washakie and the Shoshone to Brown's Hole on the Green River (today in northwestern Colorado) where a "few Ute and Navajos came up on their annual visit with the Shoshone, to trade and to race horses."⁹

The Shoshone left for their fall trapping in September, but some were there in winter camp when Hamilton's party returned to Brown's Hole to winter there.¹⁰ This gathering of these three tribes before heading toward winter camps—farther south for the Utes and Navajo, and north to Wind River for Washakie's Band of Eastern Shoshone—had occurred for several previous years. Moreover, before that time period and since then, this area has been sacred to the Shoshone for hundreds of years.¹¹

Explorer Frederick W. Lander wrote a summary of Eastern Shoshone territorial use as of 1859, noting the Eastern Snakes (Shoshone) range from the waters of Wind river [*sic*] or latitude 43° 30' on the north and from the South Pass to the headwaters of the North Platte on the east, and to Bear river [*sic*] near the mouth of Smith's Fork on the west. They extend south as far as Brown's Hole on the Green River (in Colorado).¹²

WASHAKIE'S BAND OF SHOSHONE AMONG THE EASTERN SHOSHONE

Among the Shoshones, leadership had splintered after the deaths in 1843 of headmen Pahdahwakunda and Mohwoomhah. The buffalo-hunting Shoshones in and around the Green River Valley of present southwest Wyoming split into smaller bands, many of them led by younger warriors like Washakie. By the later 1840s he was chief of the Eastern Band (sometimes called Washakie's Band) of the Wyoming Shoshone.¹³

In his 1849 report about Indians in the region, Agent John Wilson noted that Washakie, Mono, Wiskin, and Oapich (Big Man) were the main leaders. Wilson took his information directly from reports by Jim Bridger. Yet Washakie himself contradicts this assessment. In his interview with Captain Ray, Washakie said that Gahnacumah was the leader of his band and that Washakie was the war chief. By 1850 Washakie was head chief of the Shoshones. He had a following of some 1,200 well-mounted, well-equipped Indians, and had allowed a few well-behaved Bannocks and Utes to join his tribe.¹⁴

Through his connections with White Americans, Washakie was able to learn English and French, skills that would later allow him to be an effective leader in negotiations with the American government. It is important to know, understand, and respect the influence of this one man—on both Native Americans and Euro-Americans.¹⁵

1851 FORT LARAMIE (HORSE CREEK) TREATY: WASHAKIE AND THE EASTERN SHOSHONE

In 1849, federal Indian agents and superintendents recommended the United States negotiate treaties with the various Shoshone bands as a part of an effort to ease the inevitably mounting tension between the white settlers moving west and the various tribes, including

the Shoshone, Sioux, Cheyenne, Arapaho, and Crow, all of whom were defending their homelands.¹⁶

A few days before the Treaty of 1851 gathering of tribes began, a delegation of about 80 Shoshone men and their families, led by a rising leader named Washakie and accompanied by Bridger, entered the treaty area even though not invited. Their presence brought concern to the Indian agents and soldiers in the camp area, who did not feel that they could defend themselves during talks because of a previous incident that had occurred.¹⁷

While en route to the treaty negotiation site, the Cheyenne had attacked Washakie's group and killed two Shoshone warriors. That afternoon, the Cheyenne offered reparations for the dead Shoshone by "covering the bodies"—a ceremony of apology. After offering a feast and gifts to their former enemies the Shoshone, the Cheyenne returned the scalps of the fallen and swore they had not danced a scalp dance to celebrate the taking of the Shoshone scalps. The brothers of the Shoshone victims accepted the scalps, embraced the Cheyenne, and distributed the Cheyenne gifts among the Shoshones. After more speeches from both sides, the Cheyenne and Shoshone joined together in song and dance.¹⁸

Professor Vine Deloria, Jr. asserts that when Washakie, now considered the leader of the band of the Shoshone delegation, arrived, the Sioux group balked at their presence because of an earlier battle in which a group of Shoshone had killed a number of Sioux. Deloria says a Sioux warrior even attempted to assassinate Washakie.¹⁹ The would-be assassin, father of one of the men killed by the Shoshone, was tackled by a French trapper and taken back to the Sioux camp by their warriors.

"These Indians (Shoshone) were not considered by the Superintendent [of Indian Affairs] as embraced by his instructions, and were consequently not parties to the treaty negotiated with the other tribes. The [Shoshone] delegation were kindly received [whites must not have noticed the attack by the Sioux on Washakie], suitable presents were bestowed upon them, and they returned to their lands with more friendly feelings toward the government and the whites."²⁰ This bureaucratic reason may have also influenced their lack of an invitation to the treaty negotiations.

The federal government, "realizing there was no practical way to make the Sioux and the Shoshone agree to peace terms... decided to make a separate treaty with the Shoshone at a later date."²¹ Whichever account is considered the more accurate, the fact remains that the Shoshone Nation had the requisite political and military standing to be treated as a sovereign entity by the United States.

It is evident that the Treaty of 1851 was not made with the Eastern Shoshone; thus they had neither agreed to nor were they bound to Article 2, which allowed the federal government to create roads and military posts within defined areas. Neither does Article 5, which sets the boundary parameters of the respective tribal territories, apply; nor does the provision allowing the right of free passage through their lands. Much of the U.S. government's illegally created maps designat-

ing unlawful emigrant trails and rights-of-way ran directly through Shoshone Sovereign Territory. Furthermore, land in present-day Colorado still belongs to the Shoshone. Washakie probably realized from that point on that the only way to deal with the U.S. Government was through treaties.

1851 TO 1863: ILLEGAL U.S. GOVERNMENT INFRINGEMENT ON SHOSHONE SOVEREIGN LANDS

*In a secret message of January 18, 1803, President Jefferson asked Congress for \$2,500 to explore the West—all the way to the Pacific Ocean. At the time, the territory did not belong to the United States. Congress agreed to fund the expedition that would be led by Meriwether Lewis and William Clark.*²² The vast territory encompassed by the Lewis and Clark expedition was owned by Native American Nations. Over the next 60 years, the U.S. Congress approved funding for hundreds of expeditions west of the Missouri River to determine roads, railroads, military posts, mining, settlements, and other activities,²³ the vast majority of which occurred without the permission of the Sovereign Native American Nations who owned that land.

In April 1849, the War Department ordered an expedition to Fort Hall in the Rocky Mountains to survey a new route to the Church of Jesus Christ Latter of Latter-Day Saints (“Mormon” or LDS) settlement in the Utah Territory, as well as to obtain data on the Valley of the Great Salt Lake. This expedition was commanded by Captain Howard Stansbury. In the summer of 1849, the Stansbury Expedition began, travelling from Fort Leavenworth to Fort Kearney, then to Fort Laramie, and continuing to Fort Bridger. Lieutenant John W. Gunnison led some of the explorers across Shoshone lands to Salt Lake City. Gunnison explored and surveyed Utah Lake and its vicinity. Severe weather conditions that fall and winter kept Gunnison in the Salt Lake City area until August 1850. In September 1850, Gunnison returned with Stansbury to Fort Bridger.²⁴ The Stansbury party retraced its route back across the continent to St. Louis and, by the first part of January 1851, Captain Stansbury, Lieutenant Gunnison, and Albert Carrington were in Washington, D.C., where they spent the next five months preparing the maps and records for the publication of the Stansbury Expedition.²⁵

In 1852 *Exploration and survey of the valley of the Great Salt Lake Of Utah: including a reconnoissance [sic] of a new route through the Rocky mountains*, by Howard Stansbury, captain, Corps topographical engineers, U.S. Army, was printed by order of the United States Senate. Stansbury wrote:

This pledge, thus heartily given, was as faithfully redeemed; and it gives me pleasure here to acknowledge the warm interest manifested and efficient aid rendered, as well by the president as by all the leading men of the community, both in our welfare and in the successful prosecution of the work.²⁶ ...

Having now brought our reconnoissance [sic] for a new route from the

waters of the Pacific to a point where its results can be at least approximately ascertained, it is very gratifying to be able to state that these results are, in a high degree, satisfactory; more so indeed than I had anticipated.

It has been ascertained that a practicable route exists through the chain of the Rocky Mountains, at a point sixty miles south of that now generally pursued, and in a course as much more direct as the chord of an arc is than the arc itself.²⁷

The path for the railroad was determined through Shoshone and other tribal lands without permission or a treaty, and over ten years before the Treaty of 1863.

Under the provisions of the Army Appropriation Act of March 1853, Secretary of War Jefferson Davis was directed to survey possible routes to the Pacific. Four east-to-west routes, roughly following specific parallels, were to be surveyed by parties under the supervision of the Topographical Corps. The most northerly survey, between the 47th and 49th parallels, was under the direction of Isaac Ingalls Stevens, governor of Washington Territory.²⁸

In June 1853, Captain John W. Gunnison (promoted from lieutenant in March 1853), while still in Washington, D.C., specifically requested staff for an expedition to explore, survey, and ascertain the most practicable and economical route for a railroad from the Mississippi River to the Pacific Ocean—the proposed “Transcontinental Railroad.”²⁹ Gunnison’s mapping expedition left for the West in the summer of 1853. On October 26, 1853, Gunnison and part of his exploratory team were in a camp they had established between the Sevier River and Sevier Lake when they were massacred by Pahvant (Ute) Indians.³⁰

Eventually, following completion of the various expeditions sent out to survey and explore possible railroad routes, a comprehensive set of reports titled *Reports of Explorations and Surveys, to Ascertain the Most Practicable and Economical Route for a Railroad from the Mississippi River to the Pacific Ocean, Made Under the Direction of the Secretary of War, in 1853-4*, encompassing 12 volumes, was published and brought out between 1854 and 1861. Volume II of this set was published by Beverley Tucker in Washington, D.C. in 1855, after Gunnison’s death.³¹ Volume II contains reports authored by the remaining members of Gunnison’s expedition, including Lieutenant E.G. Beckwith, who completed the report begun by Gunnison on the route near the 38th and 39th parallels, which was titled *Report of Explorations for a Route for the Pacific Railroad, by Capt. J.W. Gunnison, Topographical Engineers, Near the 38th and 39th Parallels of North Latitude, from the Mouth of the Kansas River, MO., to the Sevier Lake, in the Great Basin[;] Report by Lieut. E.G. Beckwith, Third Artillery.*³²

The information contained in the volumes of *Reports of Explorations and Surveys* should be analyzed by every tribe associated with the places where the exploration teams’ survey activities occurred because arguably, Gunnison and his colleagues conducted mapping expeditions on Shoshone, Ute, and other western Tribal lands without Tribal or treaty permission. Therefore the geographical and topographical data contained in the *Reports of Explorations*

and Surveys was obtained through the illegal mapping of western Sovereign Tribal territories by the U.S. government for its own self-interested purpose of assessing future use of lands west of the Mississippi River. The maps and writings that came out of the exploration and survey findings led to the rush of settlers, gold miners, and other whites to Shoshone and other western Tribal lands that had not been approved by Native Nations or through treaties. It is also significant that these survey and mapping expeditions were conducted without the benefit of and prior to the negotiation of any treaties with the Indigenous Nations that would be most adversely impacted by railroad-building and Euro-American emigration from the eastern part of North America. Furthermore, the U.S. House resolution following this section shows the U.S. Congress funded the publication of ten thousand copies of the reports describing the surveys conducted on Native lands (which were done without treaties or compensation) and distributed the reports to the public:

RESOLUTION OF HOUSE OF REPRESENTATIVES, FEBRUARY 14, 1855

Resolved, That there be printed, for the use of the House, ten thousand copies of the reports of surveys for a railroad to the Pacific, made under the direction of the Secretary of War, embracing the report of F. W. Lander, civil engineer, of a survey of a railroad route from Puget Sound, by Fort Hall and the Great Salt Lake, to the Mississippi river [*sic*]; and the report of J. C. Fremont, of a route for a railroad from the head-waters of the Arkansas river [*sic*] into the State of California, together with the maps and plates accompanying each of said reports, necessary to illustrate them.

Attest:

JNO. W. FORNEY, *Clerk H. R. U. S.*³³



Map of Proposed Railway and Telegraph Routes [derived from maps produced by U.S. exploration teams, 1852-1855, by J.W. Gunnison, E.G. Beckwith, et al.].

The previous map of proposed railroad and telegraph routes shows the projected northern route would pass through Nebraska Territory, Cheyenne Pass and Bridger Pass, traveling through Shoshone Land, while the southern route (identified by two arrows) passed through Ute lands. The maps were produced from Gunnison's and Beckwith's *Reports of Explorations and Surveys, Volume II*.³⁴ Conducting explorations and developing maps before the Fort Bridger Treaty of 1863 and the Treaty of 1968 were negotiated was a violation of the Sovereign Rights of the Shoshone and Ute Nations.

IMPACTS OF NORTH AMERICAN TELEGRAPHY

The *Act to Facilitate Communication between the Atlantic and Pacific States by Electric Telegraph*, also known as the Pacific Telegraph Act of 1860, was an Act of Congress that authorized the U.S. Treasury to fund the construction of a telegraph line across the continental United States. Note that this telegraph network was approved on June 15, 1860 and built across Shoshone territory between July 4 and October 24, 1861, without Shoshone or Treaty permission. The Pacific Telegraph Act was signed into law by President James Buchanan on June 16, 1860, and called for the facilitation of communication between the east and west coasts of the United States of America. The bill authorized an annual loan of forty thousand dollars for ten years, a maximum fee of three dollars for a single dispatch of ten words, and the use of a quarter-section of public land for every fifteen miles of line to subsidize the building of a telegraph line west of the state of Missouri to San Francisco, with a branch line to Oregon. The contractors chose the route,³⁵ which can be seen in the following timeline:³⁶

4 July 1861: Work to complete the first transcontinental telegraph begins, with James Gamble in charges [*sic*] of the western crew starting in Nevada, and Edward Creighton heading the eastern crew starting in Nebraska.³⁷

5 August 1861: A team laying wire reaches Fort Laramie from the east.³⁸

17 October 1861: A link between [a] line headed east from Salt Lake City is joined to the eastern line at Fort Bridger. Edward Creighton telegraphs his wife, "in a few days the two oceans will be united."³⁹

In his 2012 article titled "Indian Relations in Utah during the Civil War," Kenneth Alford characterizes the apprehension felt by Indian agents in the area by quoting an 1861 report from the Utah Superintendency:

With the telegraph's arrival, Utah's new superintendent for Indian Affairs, Dyman S. Wood, warned Washington officials that the "establishment of the overland daily mail and telegraph lines, and their recent completion through

this Territory—consummations of such vital importance to the people throughout the Union—render it necessary that steps should be immediately taken by the government to prevent the possibility of their being interrupted by the Indians.”⁴⁰

Wood was soon replaced by James D. Doty. It is important to note, however, that *there was no Treaty signed by the Eastern Shoshone for the construction of this transcontinental telegraph line across their land.*

1862: CONGRESSIONAL ACTS TAKE NATIVE LANDS, INCLUDING SHOSHONE LANDS

In 1944 the Shoshone Indians brought suit against the United States in *Shoshone Indians v. United States*, a case that was argued before the U.S. Supreme Court in November of that year and decided in December 1945.⁴¹ Motivations on the part of the U.S. government and its agents in U.S.-Indian dealings were presented thus:

On July 5, 1862, Congress appropriated \$20,000 for defraying the expenses of negotiating a treaty with the Shoshones. The appropriation followed a letter from the Secretary of the Interior to the chairman of the House Committee on Indian Affairs expressing the view that the lands owned by the Indians of Utah were largely unfit for cultivation, and that it was “not probable that any considerable portion of them will be required for settlement for many years.” A special commission was promptly appointed and instructed that it was not expected that the proposed treaty would extinguish Indian title to the lands, but only secure freedom from molestation for the routes of travel, and “also a definite acknowledgment as well of the boundaries of the entire country they claim as of the limits within which they will confine themselves, which limits it is hardly necessary to state should be as remote from said routes as practicable.”⁴²

Three other U.S. Government Acts that would impact all tribes were passed by Congress and signed by President Lincoln. First, Congress passed the Pacific Railway Act of 1862, which gave Congress the power to extinguish Indian titles to all lands falling under the operation of this act, designated the 32nd parallel as the initial transcontinental route, and provided government bonds to fund the project and large grants of lands for rights-of-way. Second, the Homestead Act of 1862 created a mechanism to encourage white settlement in the western territories of the United States. And Third, the Morrill Land-Grant Acts funded Land Grant Universities. All three of these Acts allowed for the proceeds from sales of federally owned

land, to be obtained from Native American tribes through treaty, cession, or seizure. Thus, the Fort Bridger Treaty of 1863 was necessary to fund the U.S. Government's expansion west and within the territory of the Shoshone Sovereign Nation.

LAND THEFT, CORRUPTION, MASSACRE, AND THE TREATY OF 1863

Historical evidence may demonstrate that various U.S. government and civilian actors, including Utah Superintendent of Indian Affairs James D. Doty, President Abraham Lincoln, Colonel Patrick Edward Connor, and Brigham Young may all have worked and conducted actions in a way to effect land theft through corruption, massacre, and the forced signing by the Shoshone of the Fort Bridger Treaty of 1863. James Doty was the governor of Wisconsin Territory from 1841 to 1844 and its congressman from 1849 to 1853. He lost the U.S. Senate election in Wisconsin in 1859 and, like many others, was appointed by Lincoln as superintendent of Indian Affairs for Utah in 1861.⁴³

I thought Lincoln's appointment of Doty was due to patronage, but have found that Doty did have previous experience with tribal law and Treaties. Doty previously was appointed as the federal judge for the district by President James Monroe.⁴⁴ In a famous 1830 case, Doty threw out a jury verdict against Oshkosh, chief of the Menominees, for murder of another Indian. His reasoning was that [American] laws were not enacted for the Indian. Doty's decision was unpopular with whites and ultimately cost him his job: in 1832, he was replaced with another judge.⁴⁵

He also was responsible for the Doty Treaty of 1841. The purpose of the treaty was to create a permanent all-Indian territory that, once it had achieved the desired level of "civilization," might eventually be granted statehood. It was for the Indians of the northwest the same as Oklahoma had been for the Indians of the southwest. The land for such an Indian nation included about 30 million acres west of the Mississippi River in present day western and southwestern Minnesota. The Senate did not ratify his treaty.⁴⁶ Doty obviously wanted the Shoshone moved to Minnesota in 1841.

Lincoln's acceptance of U.S. Indian policy indicates he conformed to the general social attitudes of his time. He viewed Indigenous Native Americans as a foreign people that would need to be removed through land purchase or conquest. Lincoln's acquiescence in Indian conquest policies is evidenced in his actions in what Professor Carol Chomsky, noted scholar of legal history, describes as the "United States-Dakota War Trials,"⁴⁷ which occurred:

Between September 28 and November 3, 1862, in southwestern Minnesota, when nearly four hundred Dakota men were tried for murder, rape, and robbery. All but seventy were convicted, and 303 of these were condemned to die. After an official review of the trials, the sentences of thirty-eight were confirmed and,

on December 26, 1862, these thirty-eight were hanged in Mankato, Minnesota, in the largest mass execution in American history. On November 11, 1865, after three additional trials, two more Dakota followed them to the gallows.⁴⁸

In the introduction to her law review article, Professor Chomsky states “the evidence demonstrates that the trials of the Dakota prisoners were objectionable in a number of respects,”⁴⁹ including trying the prisoners before a military commission rather than in state or federal criminal court, and having the trials officially reviewed, not by an appellate court, but by President Lincoln. Chomsky concludes that:

few of the convictions are supportable. President Lincoln’s commutation of all but thirty-eight death sentences may have been an effort to correct the trial verdicts to reflect the proper standard of responsibility, but the flaws in the proceedings make even his judgments questionable.⁵⁰

Meanwhile in Shoshone Lands, Cache Valley was not only fertile grass land, but also very and “especially important to the Shoshone, who called it ‘the House of the Great Spirit,’ indicating the special spiritual importance they assigned to the valley.”⁵¹ As early as 1857, Mormons moved into the area, but left in 1858 due to Shoshone attacks.⁵²

BRIGHAM YOUNG’S DESIRE FOR SHOSHONE LAND AREAS FOR NEW MORMON SETTLEMENTS

Later in 1858, Brigham Young ordered 40 men to return to Cache Valley, instructing them to build a strong settlement as a base from which to herd livestock. Anger between the Shoshones and the Mormons exploded after Mormon settlers killed Chief Paganapin Smithfield. In revenge, the Shoshone killed two Mormon settlers. Skirmishes became commonplace.⁵³ Young saw Indians living along the Bear River provided the most formidable obstacles to expansion northward from Cache Valley.⁵⁴ It is evident, therefore, that Brigham Young also wanted the Bear River Valley for Mormon settlement and had to get rid of those Shoshone who were living there.

BEAR RIVER MASSACRE: JANUARY 29, 1863

In early January, 1863, Chief Justice John F. Kinney of the Utah Supreme Court had issued warrants for the arrest of several Shoshoni chiefs for the murder of a miner. Critics have questioned whether the warrants could legally be served, since the chiefs were no longer within the court’s jurisdiction. The Bear River camp was twelve miles north of the Franklin Settlement in Washington Territory.⁵⁵

Leaving Salt Lake City on January 24, 1863 under the cover of darkness, Colonel Patrick

Edward Connor and his men traveled 140 miles over four days toward the Shoshone encampment on the Bear River, (now known as Boa Ogoi, the Bear River Massacre site, which is sacred to the Shoshone).⁵⁶ There Connor and his men slaughtered what has been estimated to be more than 400 Shoshone men, women, and children, the largest massacre of Native Americans in the West, much larger than the horrors of Sand Creek, Wounded Knee, or Washita. In his final report to the Army, Connor tabulated the Shoshone killed to be 224. The next day, three men from Franklin—William Head, William Nelson, and William Hull—went to the massacre site at the request of church leadership and counted 400 dead. Patrick Connor’s reward for this victory was a promotion to Brigadier General in the Volunteer Army in October of that year.⁵⁷

Newly uncovered documents claim far higher number of Shoshones killed in the Bear River Massacre. The autobiography of a Mormon pioneer written nearly a century ago and recently made public indicates the number of Shoshones killed in the 1863 Bear River Massacre could be much higher than previously believed. In his 1911 autobiography, Danish immigrant Hans Jaspersen claims to have walked among the bodies, counting 493 dead Shoshones.⁵⁸ The survivors of the Massacred found a home in Washakie, Utah and settled there. However, the LDS Church sold the land and forced the Shoshone to move off their own land.⁵⁹

Lincoln put his policy of taking Indian land through treaty or force in place, since no treaty had been signed by the Shoshone until later in 1863. Doty was appointed the governor of the Utah Territory in 1863,⁶⁰ shortly after the Bear River Massacre. Brigham Young took control of Shoshone land, not with a treaty but through a massacre, and over 100 Mormon families moved into the area.⁶¹

Note again that Patrick Connor was rewarded for this “victory” [massacre] with a promotion to Brigadier General in the Volunteer Army.⁶² Connor was elevated to this rank by Lincoln for the “successful attack” at Bear River.⁶³ Connor continued to butcher Native Peoples. On July 28, 1865, in a paragraph to Colonel Cole, who was to command the right column of the punitive Powder River Expedition, General Connor said: “You will not receive overtures of peace or submission from Indians but will attack and kill every male Indian over 12 years of age.”⁶⁴ On July 30, 1865, the Powder River campaign left Fort Laramie under the command of Brigadier General Connor. Colonel Cole describes how later that August Connor and his troops encountered and attacked a band of

about 700 in number, [who] were Arapahoes under Chief Black Bear and Old David. Some sixty odd Indians were killed, including a son of Black Bear; 250 lodges and winter supplies were destroyed and large quantities of buffalo robes and furs, together with lodge poles and coverings, were piled and burned. Upon one of these piles the dead were placed and burned.⁶⁵

Attached to General Connor's command were "well know [*sic*] and famous scouts" including Washakie's old friend Jim Bridger.⁶⁶

In the aftermath of the Bear River Massacre, Young profited greatly in terms of land, money, and power. On May 21, 1868 (nearly two months before the Eastern Shoshone signed the 1868 Treaty) a contract was signed by Brigham Young, for the LDS Church's School of Prophets (the actual business entity of the church at that time), and Samuel Reed, for Union Pacific, at the Continental Hotel in Salt Lake City. The contracts, in the amount of approximately \$2,125,000,⁶⁷ were to build the railroad grade from near the present-day Wyoming border to the Great Salt Lake.⁶⁸ Subcontractors for Brigham Young included his sons, Joseph A. Young, Brigham Young, Jr., and John W. Young, and John Sharp, his attorney.⁶⁹ Doty and Lincoln both died in 1865.

Shoshone Nation member, Native American History lecturer, and author Darren Parry wrote in 2019:

Doty, Lincoln, Young and Connor were all instrumental and I feel conspired together to force the 1863 signing of the treaty at Fort Bridger with all of the Shoshone bands. I have no doubt that the Bear River Massacre on January 29, 1863 and the Sand Creek Massacre on November 29, 1864 helped convince Washakie (Eastern Shoshone) and the other Shoshone Nations that treaties were the best and perhaps only course for their peoples' survival, and led to both Fort Bridger Treaties of 1863 and 1868.⁷⁰

In a 2021 *Washington Post* article, writer Dana Hedgpeth put another present-day period (for the time being) on the story of the Bear River Massacre and the place where it happened in Utah: "The Northwestern Band of the Shoshone Nation bought about 550 acres of Bear River land in 2018. The Tribe, which has a population of about 560, plans to build an interpretive center to honor the history of those lost at Bear River."⁷¹

FORT BRIDGER TREATY OF 1863

Articles of Agreement made at Fort Bridger, in Utah Territory, this second day of July, A.D. one thousand eight hundred and sixty-three, by and between the United States of America, represented by its Commissioners, and the Shoshone nation of Indians, represented by its Chiefs and Principal Men And Warriors of the Eastern Bands, as follows:

ARTICLE 1. Friendly and amicable relations are hereby re-established between the bands of the Shoshonee [*sic*] nation, parties hereto, and the United States; and it is declared that a firm and perpetual peace shall be henceforth

maintained between the Shoshonee nation and the United States.

Friendly relations reestablished; perpetual peace was probably violated by the U.S. government and their representatives, miners, travelers, and bad white men, along with some Shoshone.

ARTICLE 2. The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be and remain forever free and safe for the use of the government of the United States, and of all emigrants and travellers under its authority and Protection, without molestation or injury from any of the people of the said nation. And if depredations should at any time be committed by bad men of their nation, the offenders shall be immediately seized and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over said routes is hereby guaranteed by said nation. Military agricultural settlements and military posts may be established by the President of the United States along said routes; ferries may be maintained over the rivers wherever they may be required; and houses erected and settlements formed at such points as may be necessary for the comfort and convenience of travelers. Routes of travel; safety of travelers; settlements and posts; offenders. I am not sure if the bad men were seized and delivered up to the proper officers of the United States. It also seems that military posts (and their attendant agricultural settlements) included non-military personnel.

ARTICLE 3. The telegraph and overland stage lines having been established and operated through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said nation; and that their property, and the lives of passengers in the stages, and of the employees of the respective companies, shall be protected by them.

Retroactively approves telegraph and overland stage lines that were mapped and installed without a previous Treaty or the Shoshones' approval of such actions.

And further, it being understood that provision has been made by the Government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said nation that said railway, or its branches, may be located, constructed, and operated, without molestation from them, through any portion of the country claimed by them.

The illegal location, construction, and operation of a railway through Shoshone Sovereign Lands to the Pacific Ocean mapped previously without Shoshone permission or Treaty was approved by Article 3.

ARTICLE 4. It is understood the boundaries of the Shoshonee country, as defined and described by said nation, is as follows: On the north, by the mountains on the north side of the valley of Shoshonee or Snake River; on the east, by the Wind River mountains, Peenahpah river, the north fork of Platte or Koo-chin-agah, and the north Park or Buffalo House; and on the south, by Yampah river and the Uintah mountains. The western boundary is left undefined, there being no Shoshonees from that district of country present; but the bands now present claim that their own country is bounded on the west by Salt Lake.

*This article defined the boundaries of Shoshone country which included their lands in Colorado. These boundaries were described in this article and in a map provided by Superintendent of Indian Affairs for Utah Doty, **both of which have been proven to be inaccurate.***

ARTICLE 5. The United States being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by whites, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, the United States promise and agree to pay to the bands of the Shoshonee nation, parties hereto, annually for the term of twenty years, the sum of ten thousand dollars,* in such articles as the President of the United States may deem suitable to their wants and condition, either as hunters or herdsman. And the said bands of the Shoshonee nation hereby acknowledge the reception of the said stipulated annuities,** as a full compensation and equivalent for the loss of game, and the rights and privileges hereby conceded.

The years between 1863 (the first Fort Bridger Treaty) and the second Fort Bridger Treaty in 1868 were especially traumatic for the Shoshone and Bannock Nations. Originally, the ten-thousand-dollar allotment of foodstuffs and supplies was deemed sufficient to enable the Indians to survive the difficult winters until such time as they could be settled on a reservation and learn the skills needed for agricultural pursuits. However, Congress often failed to appropriate the money for the Indian supplies and difficulties with transportation delayed distribution.

*It is uncertain as to whether the Eastern Shoshone received the \$10,000 annuity a year after the Treaty of 1868 and the actual value of the \$6,000 in goods delivered has not been verified. A search of the National Archives may uncover the value of the goods delivered, delivery dates, and evidence of payment for the full 20 years of the compensation.

**Annuity: An acceptance of moneys or material goods as a compensation

for loss of game, but not loss of minerals, forestry and other natural resources taken illegally by the railroads, military, or white settlers illegally occupying Shoshone lands.

ARTICLE 6. The said bands hereby acknowledge that they have received from said Commissioners provisions and clothing amounting to six thousand dollars, as presents, at the conclusion of this treaty.***

****Presents acknowledged. I find no evidence of a list or value of such presents.*

ARTICLE 7. Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said Treaty with said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.

AMENDMENT ENDING MEXICAN AGREEMENTS.

Done at Fort Bridger the day and year above written.

James Duane Doty,
Luther Mann, Jr., Commissioners.
Washakee, his x mark.
Wanapitz, his x mark.
Toopsapowet, his x mark.
Pantoshiga, his x mark.
Ninabitzee, his x mark.
Narkawk, his x mark.
Taboonshea, his x mark.
Weerango, his x mark.
Tootsahp, his x mark.
Weeahyukee, his x mark.
Bazile, his x mark.
In the presence of—
Jack Robertson, interpreter.
Samuel Dean⁷²

The 1863 Treaty of Fort Bridger tried to cover up the illegal violations of the Sovereign Rights of the Eastern Shoshone Nation committed by the U.S. federal government through its mapping and surveying (in the 1850s), building roadways, telegraph lines, and offices (1861), and preparing for the coming railroad on Eastern Shoshone land without previous treaty

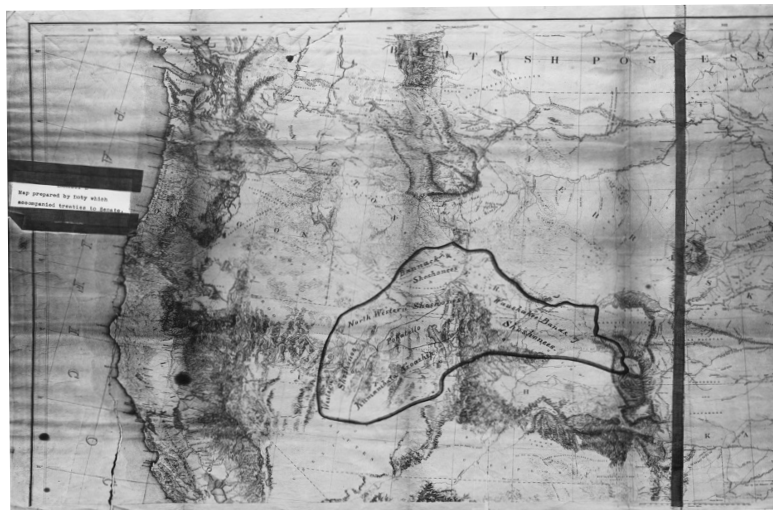
permission or compensation. The Bear River Massacre in early 1863 made it quite clear that the United States was prepared to go to great lengths to compel Shoshones to comply with demands for passage of this treaty and future treaties.

A positive outcome of this treaty is the inclusive evidence of land in Colorado as Eastern Shoshone Land. This, plus previous evidence in this report, shows that the Shoshone lived on, visited, and utilized the land in Colorado, as mentioned in this treaty and shown by Doty's following map. Doty's map was presented to the United States Senate to show the delineation of the Shoshone Territory in the Treaty of 1863.

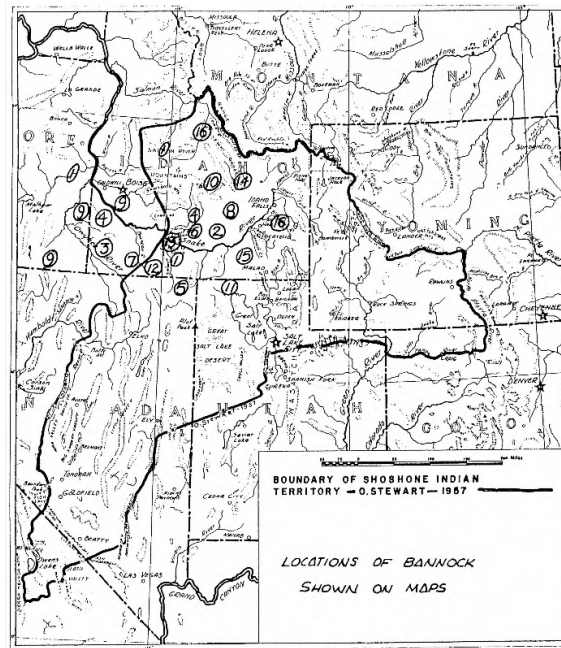
I did find that Doty's map, presented to the U.S. Senate to gain approval of this treaty, was made in 1859,⁷³ although he was not in the Utah Territory at that time. It appears that Doty's map was obtained from the Department of War from the mappings conducted in 1850. Later maps identify differences in his map and other mapping of Shoshone Lands identified in Article IV. Some identified more land in Colorado than that identified by Doty's map. *See the following maps:*

In 1957, O. Stewart developed a map from the 1863 Treaty geographic boundaries that differs from Doty's map concerning the section of Colorado owned by the Eastern Shoshone.⁷⁴ Dr. Joseph Robertson (November, 2023) developed the overlay of the Royce 520 map for 1863.

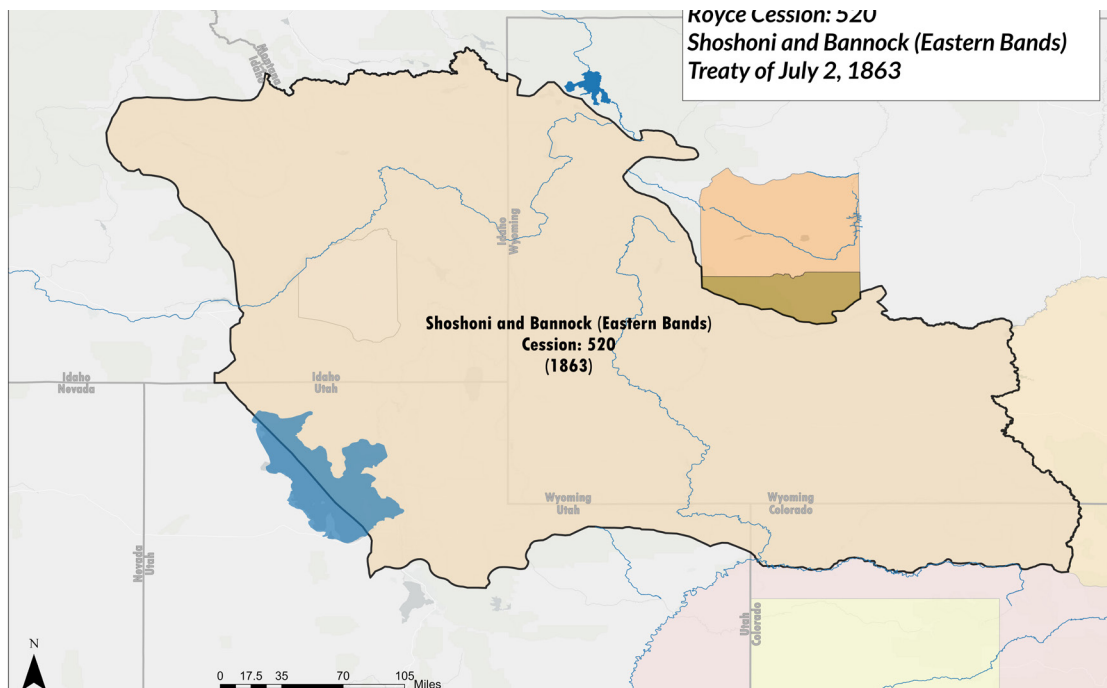
A comparison of these three maps illustrates discrepancies in the description of the territory identified in the 1863 Treaty. Later I will discuss the possibility that the Shoshone owned more land in Colorado than the Doty map identifies. I believe Dr. Robertson's research offers evidence of this fact and requires further investigation.



Map of Shoshone Territory, by James Doty, 1859, UAIDA Main Collection, J. Willard Marriott Digital Library, University of Utah (<https://collections.lib.utah.edu/ark:/87278/s63z134h>).⁷⁵



Boundary of Shoshone Indian Territory, showing the locations of the Bannock, by O. Stewart, 1957, UAIDA Main Collection, J. Willard Marriott Digital Library, University of Utah (<https://collections.lib.utah.edu/details?id=358831>).⁷⁶



Indian Land Cessions Analysis, the Indigenous Perspective, Royce Cession: 520, by Dr. Joseph Robertson, 2023.

1866: WASHAKIE SETTLES 1863 TREATY BOUNDARIES WITH CROW CHIEF BIG ROBBER

As John Elliott relates the story of the 1866 battle between Chief Washakie of the Shoshone and Chief Big Robber of the Crow on the Clio website:

The Wind River Valley was one of the last areas producing quantities of game to be hunted. The increasing scarcity of animals and the approaching winter, tribes were forced to consolidate near what is now known as Crowheart Butte. The dispute erupted when the tribes of the Shoshone/Bannocks and the Crows both made claims to the hunting grounds. The 1851 Fort Laramie Treaty gave the land to the Crow Indians. Twelve years later, the 1863 Fort Bridger Treaty granted the land to the Shoshone and Bannocks.⁷⁷

Despite the 1863 Treaty provisions, the Crow continued to enter that area, and after being approached to leave Shoshone Lands,

Chief Washakie sent his best warrior and the warrior's wife to ask Crow Chief Big Robber to leave their land and to move east. Chief Big Robber responded by killing the warrior and sending the warrior's wife back to the Shoshone to relay what happened. Washakie quickly gathered a war party of men from the Shoshone and the Bannock and rode to the Crows seeking revenge. The battle ensued and lasted about a week without any resolution. Noticing that both sides had endured many casualties, Washakie proposed that the two chiefs would fight to the death for the land. Both tribes agreed to respect the outcome and the losing tribe would leave the hunting grounds for good. The exact location of the duel is not documented, but memories passed down through the ages suggest that the fight happened on the top of the butte. Both chiefs were riding their horses and taunting the other before the fight. Washakie allegedly taunted his rival by promising to cut out his heart after defeating him.⁷⁸

The duel ended when Washakie cut out the heart and placed it on his spear. The Crows respected the decision and the result of the duel ended the violence. The name Crowheart Butte came from the story of Washakie removing the heart of the Crow Chief during the battle. The butte is now considered sacred grounds and it is illegal for any non-Native American to climb to the top. The butte is used for spiritual ceremonies for the Shoshone people.⁷⁹

It is interesting to note that in the year before the clash between Chief Washakie and Chief Big Robber, the federal government had taken action to resolve land ownership questions

in Utah. In March of 1865, William P. Dole, commissioner of Indian Affairs, directed Utah Territory Superintendent of Indian Affairs O.H. Irish to negotiate additional Indian treaties, as required, to place Utah’s remaining Indians onto a reservation. The commissioner additionally instructed Irish that because the government had not previously accepted Indian titles to any land in Utah, he was to ensure that the resulting treaties were framed so that the Indians “[relinquished] the *right of occupancy*” of lands within boundaries identified by Congress, and “[agreed] to remove to and occupy the lands reserved for their use.”⁸⁰

THE INDIAN PEACE COMMISSION: RAILROADS AND RESERVATIONS

Congress approved *An Act to establish Peace with certain Hostile Indian Tribes* on July 20, 1867, which, among other things, created what has come to be known as the “Indian Peace Commission.”⁸¹ The appointed commissioners were authorized by said act to call together the chiefs and headmen of such bands of Indians who were waging war, for the purpose of ascertaining their reasons for hostility, and, if thought advisable, to make treaties with them. The members of the Indian Peace Commission were instructed “to make treaty stipulations that would secure railroad routes and designate land for future Native American reservations.”⁸² The Indian Peace Commission consisted of eight commissioners, of which four—General William T. Sherman, General William S. Harney, Major General Alfred H. Terry, and General Christopher C. Augur (appointed later to the Peace Commission by President Andrew Johnson)—were active military. Of the four remaining commissioners, three had military or federal government connections or positions: John B. Sanborn, a former major general; John B. Henderson, U.S. senator from Missouri and chair of the Senate Committee on Indian Affairs; and Nathaniel G. Taylor, acting Commissioner of the Bureau of Indian Affairs; while the last commissioner, Samuel F. Tappan, an activist for Native American rights, was the only non-government-affiliated civilian.^{83, 84}

MEDICINE LODGE TREATIES: TREATY WITH THE SHOSHONEE AND BANNACKS – JULY 3, 1868⁸⁵

ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA,
TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME,
GREETING:

Whereas a treaty was made and concluded at Fort Bridger, in the Territory of Utah, on the third day of July, in the year of our Lord one thousand eight hundred and sixty eight, by and between Nathaniel G. Taylor, William T. Sherman, William S. Harney, John B. Sanborn, S.F. Tappan, C.C. Augur, and Alfred

H. Terry, commissioners, on the part of the United States, and Wash-a-kie, Wau-ni-pitz, and other Chiefs and Headmen of the Eastern Band of Shoshonee Indians, and Tag-gee, Tay-to-ba, and other Chiefs and Headmen of the Bannack Tribe of Indians, on the part of said band and tribe of Indians respectively, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

Articles of a Treaty with the Shoshonee (Eastern Band) and Bannack Tribes of Indians, made the third Day of July, 1868, at Fort Bridger, Utah Territory.

Articles of a treaty made and concluded at Fort Bridger, Utah Territory, on the third day of July, in the year of our Lord one thousand eight hundred and sixty eight, by and between the undersigned commissioners on the part of the United States, and the chiefs and headmen of and representing the Shoshonee (eastern band) and Bannack tribes of Indians, they being duly authorized to act in the premises:

ARTICLE I. From this day forward, peace between the parties to this treaty shall forever continue. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating or because of his violating

the provisions of this treaty or the laws of the United States shall be reimbursed therefor.

I find that this article was violated in terms of bad men who still invaded Shoshone Land, and where damages were never fully determined or paid.

ARTICLE II. It is agreed that whenever the Bannacks desire a reservation to be set apart for their use, or whenever the President of the United States shall deem it advisable for them to be put upon a reservation, he shall cause a suitable one to be selected for them in their present country, which shall embrace reasonable portions of the “Port neuf” and “Kansas Prairie” countries, and that, when this reservation is declared, the United States will secure to the Bannacks the same rights and privileges therein, and make the same and like expenditures therein for their benefit, except the agency house and residence of the agent, in proportion to their numbers, as herein provided for the Shoshonee reservation. The United States further agrees that following district of country, to wit: commencing at the mouth of Owl creek and running due south to the crest of the divide between the Sweetwater and Papo Agie rivers; thence along the crest of said divide and summit of Wind River mountains to the longitude of North Fork of Wind river; thence due north to mouth of said North Fork and up its channel to a point twenty miles above its mouth; thence in a straight line to head-waters of Owl creek and along the middle channel of Owl creek to a place of beginning, shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshonee Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as embraced within the limits aforesaid.

**On July 30, 1869: President Grant adopts recommendation of Secretary of Interior; Bannock reservation mentioned by the second article of the Treaty of 1868 to be included within reservation established by June 14, 1867 Executive Order. A special agent was assigned to the Boise and Bruneau bands of*

Shoshone Indians in 1867. In 1869 some Western Shoshone and Bannock Indians were moved to [Fort Hall Reservation](#); and in 1872 the Bannock Indians previously assigned to the Shoshone and Bannock Agency in Wyoming were also moved to Fort Hall.⁸⁶ Thereafter, reservations were established either by presidential executive order or congressional enactment.⁸⁷

I do feel that the boundaries of this agreement should be reevaluated by Dr. Joseph Robertson.

ARTICLE III. The United States agrees, at its own proper expense, to construct at a suitable point on the Shoshonee reservation a warehouse or store-room for the use of the agent in storing goods belonging to the Indians, to cost not exceeding two thousand dollars; and agency building for the residence of the agent, to cost not exceeding three thousand; a residence for the physician, to cost not more than two thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a school house or mission building so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding twenty-five hundred dollars.

The United States agrees further to cause to be erected on said Shoshonee reservation, near the other buildings herein authorized, a good steam circular saw-mill, with a grist mill and shingle machine attached, the same to cost not more than eight thousand dollars.

I feel many of these were either not delivered, achieved, paid, or conducted for many years after the Treaty was negotiated. The Court of Claims No. H-129, decided December 2, 1938, offers an accounting from the 1868 Treaty. It does offer some insight into whether future BIA funds were taken from Treaty Annuities and funds stipulated in the 1868 Treaty.

ARTICLE IV. The Indians herein named agree, when the agency house and other building shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts.

The Eastern Shoshone are still trying to obtain the hunting rights guaranteed in Article IV.

ARTICLE V. The United States agrees that the agent for said Indians shall in the future make his home at the agency building on the Shoshonee reservation, but shall direct and supervise affairs on the Bannack reservation; and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined by law. In all case of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties of this treaty.

The agent's direction and supervision of the affairs of the Bannock ended when they moved to Fort Hall.

At least one agent on the Wind River Reservation was removed for taking bribes to assign better lands to non-Indians during the allotment sale and distribution period in 1910.

ARTICLE VI. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within the reservation of his tribe, not exceeding three hundred and twenty acres in extent, which tract so selected, certified, and recorded in the "land book," as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above described. For each tract of land so selected a certificate, containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office subject to inspection, which said book shall be known as the "Shoshonee (eastern band) and Bannack Land Book."

The President may at any time order a survey of these reservations, and when so surveyed Congress shall provide for protecting the rights of the Indian settlers in these improvements, and may fix the character of the title held by

each. The United States may pass such laws on the subject of alienation and descent of property as between Indians, and on all subjects connected with the government of the Indians on said reservations, and the internal police thereof, as may be thought proper.

Land in Wyoming on and near the Wind River Reservation was often not arable and was more suitable to ranching, which required far more acres and the cattle to graze on it.

ARTICLE VII. In order to insure the civilization of the tribes entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for twenty years.

Schools were provided by the Church and a Reverend Roberts. The Church received payment for this but it is uncertain whether those funds came from this Treaty or from Indian Service funds allotted by Congress each year.

ARTICLE VIII. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, in value of one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid in value twenty-five dollars per annum.

And it is further stipulated that such persons as commence farming shall receive instructions from the farmers herein provided for, and whenever more than one hundred persons on either reservation shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be required.

As stated earlier, the land in many places was not fit for farming, especially without irrigation.

ARTICLE IX. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any and all treaties heretofore made with them, the United States agrees to deliver at the agency house on the reservation herein provided for, on the first day of September of each year, for thirty years, the following articles, to wit: For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, hat, pantaloons, flannel shirt, and a pair of woolen socks; for each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics. For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based; and in addition to the clothing herein named, the sum of ten dollars shall be annually appropriated for each Indian roaming and twenty dollars for each Indian engaged in agriculture, for a period of ten years, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if at any time within the ten years it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the tribes herein named, Congress may by law change the appropriation for other purposes; but in no event shall the amount of the appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

Paiute activist Sarah Winnemucca Hopkins often found herself in conflict with reservation officials over violations regarding the delivery and quality of the goods that were supposed to be distributed, according to treaty provisions. In her 1863 memoir she reported,

While Bateman was agent, I was asked to act as interpreter to the Shoshones by a man called Captain Dodge, an agent for the Shoshone Indians. He was going to issue clothing to them at a place called Battle Mountain. My brother Natchez went all about to summon the people there. ... It took three days for the people to come up. ... A family numbering eight persons got two blan-

kets, three shirts, no dress-goods. Some got a fishhook and line; some got one and a half yards of flannel, blue and red; the largest issue was to families that camped together, numbering twenty-three persons: four blankets, three pieces of red flannel, and some of blue, three shirts, three hooks and lines, two kettles. It was the saddest affair I ever saw."⁸⁸

ARTICLE X. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmith, as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

I feel that these personnel positions were not sufficiently or always provided.

ARTICLE XI. No treaty for the cession of any portion of the reservations herein described which may be held in common shall be of any force or validity as against the said Indians, unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive without his consent any individual member of his right to any tract of land selected by him, as provided in Article VI of this treaty.

*Neither the 1863 nor the 1868 Treaty required a majority of adult male signatures. Article 11 of the 1868 Treaty required a majority of signatures of the adult members of the Shoshone and Bannock in all future cessions of Wind River Reservation land in future Treaties. The Bannock were excluded when they moved to Fort Hall and the Northern Arapahoe were included in this agreement in the 1870s.

ARTICLE XII. It is agreed that the sum of five hundred dollars annually, for three years from the date when they commence to cultivate a farm, shall be expended in presents to the ten persons of said tribe, who, in the judgment of the agent, may grow the most valuable crops for the respective year.

I found no record of this program being fully implemented nor payment paid.

ARTICLE XIII. It is further agreed that until such time as the agency buildings are established on the Shoshone reservation, their agent shall reside at Fort Bridger, U.T. [Utah Territory], and their annuities shall be delivered to them at the same place in June of each year.

It is a distance of 185.9 miles between Fort Bridger and the Wind River Reservation. Thus it was difficult to travel that distance to obtain annuities and supplies, and often the necessary annuities had not arrived at Fort Bridger. So the Eastern Shoshone would have had to wait anywhere from weeks to months for them to arrive.

N.G. TAYLOR,
W.T. SHERMAN, Lt. Genl.
WM. S. HARNEY,
JOHN B. SANBORN,
S.F. TAPPAN,
C.C. AUGUR, Bvt. Major Genl. U. S. A., Commissioners.
ALFRED H. TERRY, Brig. Gen. and Bvt. M. Gen. U. S. A.
Attest: A.S.H. WHITE, Secretary.

Shoshones:

WASH-A-KIE. his + mark
WAU-NY-PITZ. his + mark
TOOP-SE-PO-WOT. his + mark
NAR-KOK. his + mark
TABOONSHE-YA. his + mark
BAZEEL. his + mark
PAN-TO-SHE-GA. his + mark
NINNY-BITSE. his + mark

Bannacks:

TAGGEE. his + mark
TAY-TO-BA. his + mark
WE-RAT-ZE-WON-A-GEN. his + mark
COO-SHA-GAN. his + mark
PAN-SOOK-A-MOTSE. his + mark
A-WITE-ETSE. his + mark

Witnesses:

HENRY A. MORROW, Lt. Col. 36th Infatry and Bvt.
Col. U. S. A., Comdg. Fort Bridger.
LUTHER MANPA, U.S. Indian Agent.
W.A. CARTER.
J. VAN ALLEN CARTER, Interpreter.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the sixteenth day of February, one thousand eight hundred and sixty-nine, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 16, 1869.

Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the treaty between the United States and the Shoshonee (eastern band) and Bannack tribes of Indians, made and concluded at Fort Bridger, Utah Territory, on the third day of July, 1868.

Attest: GEO. C. GORHAM, *Secretary*.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution on the sixteenth day of February, one thousand eight hundred and sixty-nine, accept, ratify, and confirm the said treaty.

In testimony whereof I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America, the ninety-third.

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

CONCERNS REGARDING THE 1868 TREATY ARE AS FOLLOWS:

- The U.S. government commissioners wanted this treaty because they were starting to understand some important factors that the 1863 Treaty did not include, such as the need to implement the Railroad Act of 1862.
- Whites in the Sweetwater mining camps and those living near Wind River would be likely to tolerate a Shoshone reservation nearby—as a buffer against the more hostile Plains Tribes raiding in the mountain valleys. For many years the Shoshone spoke favorably of living in Warm Valley—they wanted a peaceful and safe place for the People, away from settlers, miners and “bad white people.”

- “Completion of the railroad could only be accomplished through government land grants to the railroad, which made the financing and thus construction possible in the first place, required that Indian claims to those lands be relinquished before they could be granted to the railroad.” These land grants, like the ones to universities, came from previously stolen tribal lands not covered in the 1868 Treaty. And compensation for the telegraph lines, stations, railroads, and roads mapped out illegally was not mentioned or provided for in either the 1863 or 1868 Treaties.
- Moreover, the over 40 million acres of ground taken from the Eastern Shoshone was not adequately compensated for in the 1868 Treaty. Based on calculations that 40 million acres at 25 cents an acre in 1868 would have been worth \$10 million dollars at that time, and that today, with the per-acre price near or over \$5, 40 million acres would now be worth \$200 million (Bureau of Labor Statistics, Consumer Price Index (CPI), 2023).
- I did not find any evidence that the annuities from the Treaty of 1863 were continued beyond 1868 or ever fully paid.
- Furthermore, the hunting rights in the 1868 Treaty have been violated by the State of Wyoming. The land taken in the 1868 Treaty includes two National Parks and thousands of acres of presently BLM (Bureau of Land Management)-managed land that should be open to tribal hunting.
- A question was presented by a tribal member as to the actual payment amounts appropriated for the education funds of the Eastern Shoshone (and North Arapaho) children. Why were they being paid to Churches for boarding schools and “not directly to the Tribe?” Payments included in this Treaty were made to the Carlisle Indian Boarding School.
- The Treaty of 1868 divided the Shoshone who signed it into five separate Tribes. This policy of DIVIDE and CONQUER (DESTROY) was often used by the U.S. government, and continues even in the present day. (See Indian Claims Commission, 1962.)
- The United States v. Santa Fe Pacific Railroad Co. case, 314 U.S. 339 (1941), attempted to clarify the railroads’ ability to use such Treaties to cross tribal land. The United States Supreme Court held that the power of Congress to extinguish aboriginal title is plenary and nonjusticiable but that Congress was presumed not to do so absent a clear intention.
- Lastly, the Treaty removed Colorado from the Shoshone Lands designated in the 1863 Treaty and on Doty’s map.

1874: CONGRESSIONAL RATIFICATION OF THE BRUNOT CESSION AGREEMENT OF 1872

It only took the U.S. government four years to begin taking land from the Eastern Shoshone. In 1872, the U.S. government negotiated what has come to be known as the Brunot Cession Agreement with the Shoshone Tribe. According to introductory explanations to treaty documents archived online by the Jackson Hole Historical Society & Museum,

In part, due to the onset of the severe nation-wide depression of the Panic of 1873, it took the Congress of the United States over two years to ratify the cession agreement reached by Felix Brunot and the Shoshones. The agreement diminished the original reservation by nearly one-third and opened the ceded southern portion to white settlement. The delays in implementation, however, led to confusion concerning the delivery of the stock cattle over the specified five-year period, and of course, the government did very little to honor its part to prevent settlers from moving onto the ceded lands. Note that Chief Washakie was a direct beneficiary of this agreement, but in the context of Shoshone customs, it provided him a discretionary fund that allowed him to meet his obligations as a headman.⁸⁹ [Washakie used these funds to help Eastern Shoshone families in need.]

AN ACT TO CONFIRM AN AGREEMENT MADE WITH THE SHOSHONE INDIANS (EASTERN BAND) FOR THE PURCHASE OF THE SOUTH PART OF THEIR RESERVATION IN WYOMING TERRITORY.⁹⁰

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement entered into on the twenty-sixth day of September, in the year of our Lord, eighteen hundred and seventy-two, between Felix R. Brunot, commissioner on the part of the United States and the chief, head-men, and men of the eastern band of Shoshone Indians, in the words and figures following, be, and the same is hereby, confirmed, satisfied, and approved by the Congress and President of the United States: *Provided;* That the cattle furnished under this agreement shall be good, young American cattle, suitable for breeding purposes.

Articles of a convention made and concluded at the Shoshone and Bannock Indian agency in Wyoming Territory, this twenty-sixth day of September, in the year of our Lord, eighteen hundred and seventy-two, by and between Felix R. Brunot, commissioner on the part of the United States, and the chief, head-men, and men of the eastern band of Shoshone Indians, constituting a majority of all the adult male Indians of said band on tribe of Indians, and duly authorized to act on the premises, witnesseth:

That whereas by article eleven of a treaty with the Shoshone (eastern band) and Bannock tribes of Indians, made the third day of July, eighteen hundred and sixty-eight, at Fort Bridger, Utah Territory, a reservation was set apart for the use and occupancy of said tribes of Indians in the following words: “The United States further agrees that the following district of country, to wit, ‘commencing at the mouth of the Owl Creek and running, due south, to the crest of the divide between the Sweetwater and the Papo-Agie Rivers; thence along the crest of said divide and the summit of Wind River Mountains to the longitude of North Fork of Wind River; thence due north, to mouth of said Nork [*sic*] Fork, and up its channel to a point twenty miles above its mouth; thence in a straight line to head-waters of Owl Creek, and, along middle of channel of Owl Creek, to place of beginning,’ shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named;”

And whereas, previous to and since the date of said treaty, mines have been discovered, and citizens of the United States have made improvements within the limits of said reservation, and it is deemed advisable for the settlement of all difficulty between the parties, arising in consequence of said occupancy, to change the southern limit of said reservation:

I. The Shoshone band or tribe of Indians (eastern band) hereby cede to the United States of America that portion of their reservation in Wyoming Territory which is situated south of a line beginning at a point on the eastern boundary of the Shoshone and Bannock reservation, due east to the mouth of the Little Papo-Agie, at its junction with the Papo-Agie, and running from said point west to the mouth of the Little Papo-Agie; thence up the Papo-Agie to the North Fork, and up the North Fork to the mouth of the canyon; thence west to the western boundary of the reservation.

II. The United States agree to pay to the Shoshone (eastern band) or tribe the sum of twenty-five thousand dollars; said sum to be expended under the direction of the President for the benefit and use of said Indians in the following manner, viz: On or before the tenth day of August of each year, for the term of five years after the ratification of this agreement, five thousand dollars shall be expended for the purchase of stock-cattle, and said cattle delivered to the Shoshones on their reservation. Second. The salary of five hundred dollars per annum shall be paid by the United States for the term of five years to Wash-akie, chief of the Shoshones.

III. Within the term of six months, and as soon as practicable after the ratification of this agreement, the United States shall cause the southern line of the Shoshone reservation, as herein designated, to be surveyed, and marked

at suitable points on the ground, and until said line has been so surveyed and marked, the United States binds itself not to permit the intrusion of any white persons upon any of the agricultural or other lands within the limit of the district proposed to be ceded.

IV. This convention or agreement is made subject to the approval of the President and the ratification or rejection of the Congress of the United States.

Approved, December 15, 1874.

THE INDIAN CLAIMS COMMISSION, 1954: DOCKET NO. 63

Note: This and other ICC Dockets will be presented in a thorough analysis by Dr. Joseph Robertson, both at the end of this report and in a separate document.

Eighty years later, in the case of the *Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, Petitioner, v. The United States of America, Defendant*, decided by the Indian Claims Commission (ICC) on August 20, 1954, the Commission found:

Based upon the evidence offered, we find that the value of the Brunot lands at the date of the Agreement of September 26, 1872, was eighty cents per acre, or a total value of \$560,513.60.

We further find that the consideration of \$27,500 paid by the defendant to petitioner for the Brunot lands worth \$560,513.60 constituted an unconscionable consideration under the provisions of the Indian Claims Commission Act.⁹¹

THE DAWES ACT OF 1887 – PUBLIC LAW (UNITED STATES) 49-105):

In the introduction to his book *The Struggle for the Land: Indigenous Insight and Industrial Empire in the Semiarid World*, author Paul Olson recounts a story of Chief Washakie's reaction to being told the Shoshone would have to take up farming: At an "1887 council where his people were told to learn farming [on allotted land] in the semidesert region east of the Wind River Mountains, the Shoshone chief Washakie exploded with, 'God damn a potato!'"⁹² Washakie's instincts were all against the cultivation of semiarid land. The allotment system was based on making Indians into sedentary farmers and severing them from their traditional nomadic lifestyle of moving freely around on their previously held lands. The true reason for enacting the allotment system through the Dawes Act of 1887 was to end the Trust Responsibility of the United States Government for Indian Tribes and reservations, and to sell allotted lands to white settlers.

Before the Shoshone Reservation was renamed the Wind River Reservation in 1938, many changes took place to redefine the reservation's boundaries. In 1887, the General Allotment Act, also known as the Dawes Act, allotted parcels of land to individual Native Americans and their families. All remaining unassigned land was sold to the government and opened to non-native homesteaders. The act stated that a head of household could qualify for 160 acres of viable farming lands or 320 acres of grazing land. Clear title for the land and immediate U.S. citizenship would be given to the property owner after 25 years.⁹³ There were 245,058 acres allotted to members of the tribes from 1907 to 1919.⁹⁴

1896 BIG HORN HOT SPRINGS LAND CESSION AGREEMENT WITH SHOSHONE AND ARAPAHOE TRIBES⁹⁵

SEC. 12. That the following amended agreement with the Shoshone and Arapahoe tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed, and shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto, and as amended as follows, namely:

Articles of agreement made and entered into at Shoshone Agency, in the State of Wyoming, on the twenty-first day of April, eighteen hundred and ninety-six, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Shoshone and Arapahoe tribes of Indians in the State of Wyoming.

ARTICLE I. For the consideration hereinafter named the said Shoshone and Arapahoe tribes of Indians hereby cede, convey, transfer, relinquish, and surrender forever and absolutely all their right, title, and interest of every kind and character in and to the lands and the water rights appertaining thereunto embraced in the following described tract of country, embracing the Big Horn Hot Springs in the State of Wyoming:

All that portion of the Shoshone Reservation described as follows, to wit: Beginning at the northeastern corner of the said reservation, where Owl Creek empties into the Big Horn River; thence south ten miles, following the eastern boundary of the reservation, then due west 10 miles; thence due north to the middle of the channel of Owl Creek, which forms a portion of the northern boundary of the reservation; thence following the middle of the channel of said Owl Creek to the point of beginning.

ARTICLE II. In consideration for the lands ceded, sold, relinquished, and conveyed as aforesaid, the United States stipulates and agrees to pay to the said Shoshone and Arapahoe tribes of Indians the sum of sixty thousand dollars, to be expended for the benefit of said Indians in the manner hereinafter described.

ARTICLE III. Of the said sixty thousand dollars provided for in Article II of this agreement it is hereby agreed that ten thousand dollars shall be available within ninety days after the ratification of this agreement, the same to be distributed per capita, in cash, among the Indians belonging on the reservation. That portion of the aforesaid ten thousand dollars to which the Arapahoes are entitled is, by their unanimous and expressed desire, to be expended, by their agent, in the purchase of stock cattle for distributions among the tribe, and that portion of the before-mentioned ten thousand dollars to which the Shoshones are entitled shall be distributed per capita, in cash, among them: Provided, That in such cases where heads of families may so elect, stock cattle to the amount to which they may be entitled may be purchased for them by their agent.

The remaining fifty thousand dollars of the aforesaid sixty thousand dollars is to be paid in five annual installments of ten thousand dollars each, the money to be expended, in the discretion of the Secretary of the Interior, for the civilization, industrial education, and subsistence of the Indians; said subsistence to be of bacon, coffee, and sugar, and not to exceed at any time five pounds of bacon, four pounds of coffee, and eight pounds of sugar for each one hundred rations.

ARTICLE IV. Nothing in this agreement shall be construed to deprive the Indians of any annuities or benefits to which they are entitled under existing agreements or treaty stipulations.

ARTICLE V. This agreement shall not be binding upon either party until ratified by the Congress of the United States.

Done at Shoshone Agency, in the State of Wyoming, on the twenty-first day of April, A.D. eighteen hundred and ninety-six.

JAMES McLAUGHLIN,
U.S. Indian Inspector.

(Here follow the signatures of Washakie, chief of the Shoshones, Sharp Nose, chief of the Arapahoes, and two hundred and seventy-one other male adult Indians over eighteen years of age, belonging on the Shoshone Reservation.)

I certify that, at the request of Indian Inspector James McLaughlin, I read the foregoing agreement to the Indians in joint council, and that it was explained to the interpreters, paragraph by paragraph.

JOHN S. LOUD,
Captain 9th Cavalry, U.S. Army,
Commanding Fort Washakie, Wyo.

We certify that the foregoing agreement was fully explained in joint council to the Shoshone's and Arapahoe's tribes, that they fully understand the nature of the agreement, and agree to the same.

EDMO. LE CLAIR,
NORKOK, his x mark,
Shoshone Interpreters,
HENRY LEE
WILLIAM SHAKESPEARE
Arapahoe Interpreters.

Witnesses:

THOS. R. BEASON
JNO. W. TWIGGS, Jr.

I certify that the foregoing names, though in some cases duplicates, in every instance represents different individuals.

EDMO. LE CLAIR, Special Interpreter.

Witnesses to the foregoing agreement and signatures of the Indians.

JOHN S. LOUD, Captain 9th Cavalry.
JOHN F. McBAIN, 1st Lt. 9th Cavalry.
JNO. W. TWIGGS, Jr.
THOS. R. BEASON.
JNO. W. CLARK, Allotting Agent.
JOHN ROBERTS, Missionary of the Protestant Episcopal Church to the Indians.

I certify that the Indians, Shoshones and Arapahoes, numbering two hundred and seventy-three (273) persons, who have signed the foregoing agreement, constitute a majority of all male Indians over eighteen (18) years of age, belonging on the Shoshone Reservation, Wyoming.

RICHARD H. WILSON, Captain 8th Infy., Acting Ind. Agent.

That for the purpose of making the payment stipulated for in the first paragraph of article three of the foregoing agreement, the same to be paid to the Indians belonging on the Shoshone Reservation per capita in cash, or expended for them by their agent in the purchase of stock cattle, as in said article provided, the sum of ten thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated.

That of the lands ceded, sold, relinquished, and conveyed to the United States by the foregoing agreement herein amended, and accepted, ratified, and confirmed, one mile square at and about the principal hot spring thereon contained, is hereby ceded, granted, relinquished, and conveyed unto the State of Wyoming; said mile square to be determined as follows: Commencing at a point one-fourth mile due east from said main spring, running thence one-half mile north, thence one mile west, thence one mile south, thence one mile east, thence one-half mile north to the point of beginning, and the remainder of the said lands ceded, sold, relinquished, and conveyed to the United States, by the agreement herein ratified and confirmed, are hereby declared to be public lands of the United States, subject to entry, however, only under the homestead and town-site laws of the United States.

Approved, June 7, 1897.

The following commentary by Hank Stamm for the *Wind River Treaty Documents* page of the Jackson Hole Historical Society & Museum website provides excellent background information and context concerning the adversarial relationship of the U.S. government and the Shoshone and Arapaho Tribes during the 1890s, especially in regard to their reservation at Wind River in Wyoming:

The 1890s saw three separate efforts to reduce the size of the Wind River Reservation. The only successful agreement was reached in 1896, when the United States acquired a section of land that contained the Big Horn Hot Springs, a series of naturally occurring springs of geothermal waters, at the northeast corner of the reservation. The total amount of land ceded was an area of 10 miles square (100 square miles). In 1897, the agreement was ratified, with an amendment that ceded 1 square mile immediately surrounding the springs to the State of Wyoming. The basis for this land transfer ostensibly came about from the efforts to control the development around the springs, which were rapidly attracting a tourist clientele. The Shoshones and Northern Arapahos were willing to concede the land primarily because the prime buffalo hunting grounds in the Big Horn Basin (north of the springs and west of the Big Horn Mountains)

had been destroyed by a huge influx of cattle and sheep ranches beginning in 1879. Thus, they no longer travelled off-reservation to hunt in the Big Horn Basin. The most important feature of the agreement, however, is that the government made the Arapahos equal partners to the Shoshones in the rights to claim the reservation. The Arapahos originally were moved to the reservation in 1878, but only with the consent of the Shoshones, and up until the 1896, [*sic*-comma] agreement they were never considered partners with the Shoshones concerning reservation ownership. This all changed because of this agreement. In the 1930s, the Shoshones eventually reached a settlement with the United States that compensated them for the loss of lands that were, in essence, given to the Arapahos. The negotiations over the 1896 agreement took an interesting twist, in that the government was forced to make concessions independently to both tribes in order to win their acceptance, as detailed in Article III. The record of the negotiations is found in the National Archives in Washington, DC. This was the last major agreement signed by the aged Chief Washakie of the Shoshone. He died three years later, in February 1900.⁹⁶

MCLAUGHLIN CESSION

Note: Most of the material in this section is taken directly from an article titled “The Tribes Sell Off More Land: The 1905 Agreement,” produced by WyoHistory.org at the Wyoming Historical Society website, <https://www.wyohistory.org/>.

In April 1904, James McLaughlin, the government negotiator with long experience among the Sioux who had negotiated the hot springs sale in 1896, returned to Wind River with the new government proposal. He urged the tribes, meeting jointly, to cede nearly 1.5 million acres of land, that is, about 2,300 square miles, north of Big Wind River.⁹⁷ Among the agreement’s provisions, described by Wyoming Congressman Frank Mondell in his unpublished autobiography, were the following:

- The tribes ceded all the land north of the Wind River down to the mouth of the Popo Agie River, as well as the southeast corner of the reservation—from the mouth of the north fork of the Popo Agie to the reservation’s southern boundary.
- Individual tribal members who, thanks to the allotment system made possible by the Dawes Act, owned land on the ceded portions would be paid for it. The government would buy that land at \$1.25 per acre in amounts up to 640 acres. In addition, the government would pay all Arapaho and Shoshone people \$50

each—per capita—as soon as possible or within 60 days after the rest of the ceded lands were opened for sale to white homesteaders.

- Money from government leases on ceded portions would also go to the tribes.
- Using the revenue from the homesteaders who purchased the lands, the federal government would secure state of Wyoming water rights for the tribes—so that Indian lands south of the river could be legally irrigated under Wyoming law.
- Land for homesteading was to be sold to whites for \$1.50 per acre if it sold in the first two years, \$1.25 if it sold in the next three, \$1 per acre if it sold in the three years after that, and after eight years the land would be sold to the highest bidder.
- From these revenues, the government, according to the agreement, would reimburse itself \$85,000 for the per capita payments, \$35,000 to cover the cost of surveying the ceded lands and \$25,000 to start work on irrigation ditches for tribal lands south of the river. Revenue after that would flow to tribal accounts, from which the Indian Bureau would spend up to \$50,000 for livestock and up to \$50,000 for schools. Remaining funds could be spent on rations, if needed.
- There would be a public accounting every July, and the spending levels could be renegotiated after 10 years.⁹⁸
- This would still leave them more than 800,000 acres south of the river, and should, the government officials said, bring them revenues of more than \$2.2 million—around \$62.5 million in 2018 dollars. In the long run, the tribes may only have gotten as much as \$500,000—around \$14.2 million in 2018 dollars.⁹⁹

The 1905 Act area was formally opened to homestead entry by a Presidential Proclamation issued June 2, 1906. The publications advertising the availability of land show the opened area as part of the Shoshone or Wind River Reservation. Unlike some disestablished reservations where all or most of the land was quickly acquired by non-Indians or the government, there was no rush of non-Indian settlers to occupy the lands. As of 1909, only 113,743.68 acres or 7.91 percent of the 1,438,633.66 acres opened to settlement were actually sold. By 1914, only 128,986.58 acres or 8.97 percent had been sold. At this same time, in addition to the unsold tribal lands, approximately 16,000 acres in the opened area had been allotted to members of the Northern Arapaho Tribe and 34,000 acres to members of the Eastern Shoshone Tribe.¹⁰⁰ Throughout the agreement negotiation process, however, there was friction between the Shoshone and Arapaho communities. Fremont County historian Loren Jost writes,

The Shoshones had a legally legitimate basis for their objections to the involvement of the Arapahos, but the government was always unwilling to take it into account. Based on the totality of events leading up to the 1904 meetings,

it seems likely there was a great deal of animosity underlying the discussions and the voting.¹⁰¹

During negotiations, Lone Bear's wife fell ill and he left; many Arapaho left with him. In the end, McLaughlin obtained signatures on the agreement from 202 of 247 eligible Shoshone men but only 80 of 237 Arapaho men—a majority of all the men on the reservation. But this was only a small minority of the Arapahos.¹⁰²

Later, after the McLaughlin Agreement had been ratified by Congress,

Lone Bear sent a message to Washington on March 6: "We think treaty ratified by Congress not agree with original treaty signed by tribe." By "treaty" he was referring to the recent agreement; his point was that changes had been made in what he thought he had agreed to. Near the end of the next year, tribal elders protested that they still had not received any per capita payments nor any revenue from the sale of part of the ceded lands that had been sold as town lots in the new town of Riverton. Town lots would naturally go for much higher prices per acre than agricultural homesteads.^{103, 104}

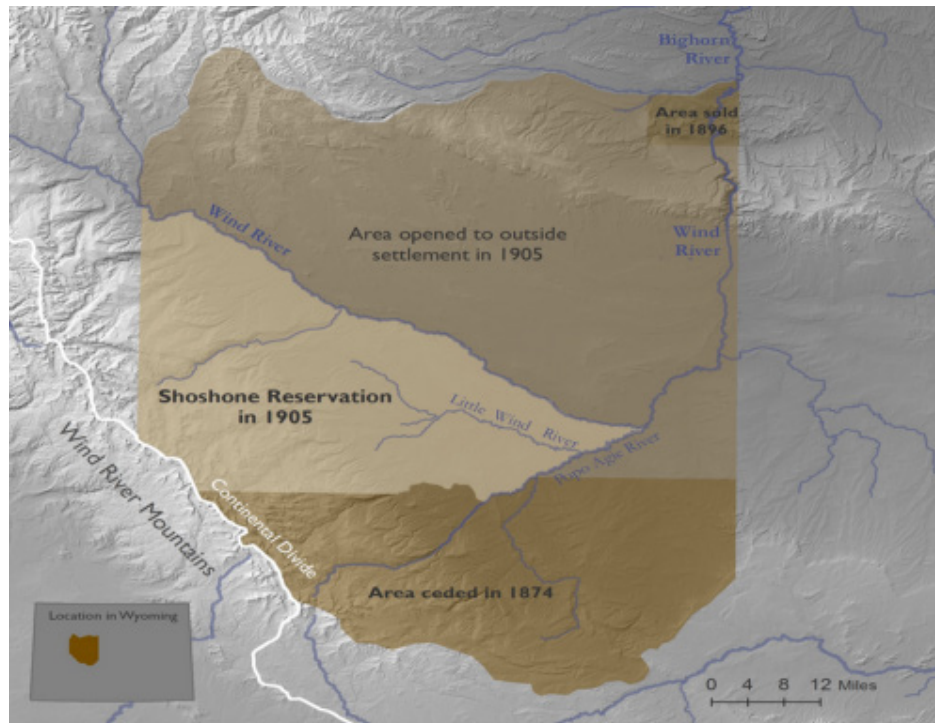
As reported in 2017 by Tom Morton on Casper's K2Radio website, however:

The issues may not be settled, however, because the 10th Circuit decision runs counter to another circuit court decision over a similar issue.

In a 14-page dissent, Circuit Court Judge Carlos Lucero wrote the two-judge majority wrongly understood how the federal government's actions as a trustee to sell tribal lands for a conditional promise of payment meant Congress intended to diminish the Reservation.

The 1905 Act, Lucero wrote, did not restore the lands at issue to the public domain. The Act held them in trust and, until they were sold, remained Indian lands. Land sales in the opened area were largely a failure, with less than 10 percent of the land being sold to non-Indians. Lucero wrote. "*Today, approximately 75 % of the lands opened for settlement by the 1905 Act is held in trust by the United States for the benefit of the Tribes and their members.*" (TREC Report author's emphasis.)

Lucero cited a 1992 U.S. Supreme Court decision that referred to disputes between governments and Indians. "Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit."



Map of 1905 Cession of Shoshone Reservation Lands, found in WyoHistory.org article from December 10, 2018, (https://www.wyohistory.org/encyclopedia/tribes-sell-more-land-1905-agreement#_ednref3), map attributed to WyGIS, n.d.¹⁰⁵

THE TUNISON LAWSUIT AND ARAPAHO PERMANENT SETTLEMENT

In 1928, the question of the legality of the Northern Arapaho presence on the Shoshone Reservation at Wind River finally came to a head. Congress passed a law allowing the Eastern Shoshone Tribe to sue the U.S. government for violating provisions of the Fort Bridger Treaty of 1868, under which the Eastern Shoshone bands had given up a reservation of more than 44 million acres for exclusive rights to a 3-million-acre reservation on Wind River.¹⁰⁶ George Tunison, attorney for the tribe, argued that without Shoshone approval, the Indian Bureau had allowed the Arapaho to settle permanently at the Shoshone Agency in 1878. From that point on, the government treated both tribes—unofficially and, the Shoshones argued, illegally—as equal beneficiaries of resources, with Arapahos sharing in Shoshone payments from the land cessions of 1896 and 1905, and taking up individual land allotments under the Dawes-Act system.¹⁰⁷

The case took years to move through federal courts. In 1937, the Supreme Court finally ruled in the Shoshones' favor. Arapaho people, historian Loretta Fowler writes, were relieved. "They had long smarted under Shoshone accusations of trespass." Now, they could no longer be seen as intruders. Their presence on the reservation was affirmed by the court—and the Shoshones would be compensated for having shared their reservation for six decades. As part

of the settlement, the Shoshone now had to recognize the Arapaho right to live on Wind River. And the name of the reservation was officially changed to the Wind River Agency.¹⁰⁸

Congress approved details of the settlement in a separate law passed July 27, 1939, which included the following provisions: After attorney fees were taken out and some funds added in for accrued interest, the Shoshone Tribe would receive about \$4.2 million in compensation for 61 years of Arapaho presence on Wind River—nearly \$75 million in 2019 dollars. Of the \$4.2 million, \$1 million would be set aside to buy back land within reservation boundaries. Each member of the Shoshone Tribe would receive \$2,450. Of that amount, \$100 would be paid in cash, and \$1,350 would be available as credit toward buying land, housing, seed, livestock or support for the old and infirm. In addition, \$1,000 would go into an account kept for each tribal member. George Tunison, attorney for the tribe, argued that without Shoshone approval, the Indian Bureau had allowed the Arapaho to settle permanently at the Shoshone Agency in 1878. From that point on, the government treated both tribes—unofficially and, the Shoshones argued, illegally—as equal beneficiaries of resources, with Arapahos sharing in Shoshone payments from the land cessions of 1896 and 1905, and taking up individual land allotments under the Dawes-Act system.^{109, 110}

INDIAN REORGANIZATION ACT OR THE WHEELER–HOWARD ACT OF JUNE 18, 1934

Eastern Shoshones and Arapahos firmly resisted other changes to tribal governance in the 1930s. In 1934, Congress passed the Indian Reorganization Act (IRA) as well as other measures intended to give tribes more autonomy. The 1934 IRA called for tribes to reorganize their governance. This included writing formal constitutions and endowing elected business councils to make tribal decisions. When the final results were in, *181 tribes* had accepted the act, and 75, including the Wind River Reservation Eastern Shoshone and Arapaho, had rejected it by a vote of 339 for and 469 against on June 15, 1935.¹¹¹

Political sovereignty to the present day resides in the separate General Councils of both Tribes.¹¹² Recent studies have shown that Non-IRA reservations were subject to less administrative oversight from the Secretary of Interior and the Bureau of Indian Affairs (BIA). Federal oversight was found to increase transaction costs and inhibit development, particularly on American Indian reservations.¹¹³ It appears that the IRA Tribes were more strictly controlled by the BIA; non-IRA tribes were far less tightly controlled by the BIA and far more self-determined in their overall decisions. It appears to me that the Eastern Shoshone and Arapahoe knew this in 1934. I also found that the Indian Reorganization Act might have led to the Termination of tribes in the 1950s and 1960s. That is an area that requires further research after completion of this report.

1935 SHOSHONE COURT OF CLAIMS CASE

The case of *Shoshone Tribe of Indians of the Wind River Reservation in Wyoming v. The United States*, No. H-219, decided December 2, 1935, offers the most precise report of the budgetary annuities, BIA expenses, irrigation and other construction of infrastructure costs, and other financial reporting that separates BIA congressionally funded expenses and programs for Treaty annuities, buildings, programs, etc.

United States v. Shoshone Tribe of Indians, 304 U.S. 111 (1938): Mineral Rights

This is a case in which the Court held that mineral rights on a reservation belonged to the tribe, not the federal government. The Court's findings showed that "the United States, by the treaty of July 2, 1863, set apart for the Shoshone Tribe a reservation of 44,672,000 acres [18,078,000 ha] located in Colorado, Utah, Idaho and Wyoming. By the treaty of July 3, 1868, the tribe ceded that reservation to the United States." The U.S. also agreed that "3,054,182 acres definitely described [called the 'district of country']" would be "set apart for the absolute and undisturbed use and occupation of the Shoshone Indians."¹¹⁴ Finally, the U.S. further agreed that "no persons...shall ever be permitted to pass over, settle upon, or reside in" that territory.¹¹⁵ The Shoshone Tribe subsequently made the reservation their permanent home.

The Court further explains in its findings that

When the 1868 Treaty was made, the Tribe consisted of full blood blanket Indians, unable to read, write, or speak English. ...the reservation. ...was known to contain valuable mineral deposits—gold, oil, coal and gypsum. It included more than 400,000 acres of timber. ...

In 1904, the Shoshones and Arapahoes ceded to the United States 1,480,000 acres to be held by it in trust for the sale of such timber lands, timber, and other products, and for the making of leases for other various purposes. The net proceeds were to be credited to the Indians. From 1907 to 1919 there were allotted to members of the tribes 245,058 acres.¹¹⁶

The Court found the fair value of a one-half interest of the Shoshone reservation of a total of 2,343,540 acres, from which 1,171,770 acres (one-half of the reservation in 1878) was taken by the U.S. for the Arapahoes on March 19, 1878, to be U.S.\$1,581,889.50. The lower court concluded that the tribe's interest in the land by the Treaty of 1868 included ownership of the mineral and timber rights. The Government appealed to the Supreme Court and asked for reversal with directions to determine the value of the Indians' right of use and occupancy excluding the value of any timber or minerals.

Justice Pierce Butler delivered the opinion of the court. The case was argued March 21 and April 18, 1938 and was decided on April 25, 1938. The Supreme Court affirmed the lower

court ruling and held that, by the Treaty of 1868, the Shoshone Tribe had acquired the mineral and timber rights of the reservation. The Court reasoned that the minerals and standing timber were elements of the land itself and that for all practical purposes, the Tribe owned the land. The language of the Treaty did not suggest that the U.S. intended to retain for itself any interest in the minerals or timber. The Court ultimately concluded that the lower court was correct in holding that the right of the Shoshone Tribe included the timber and minerals within the reservation.¹¹⁷

Shoshone and Arapaho Tribes v. United States, (364 F. 3d 1339 (Fed. Cir. 2004) was the Tribes' breach of trust case against the United States for mismanagement of mineral resources and trust funds. The Federal Circuit Court describes the reservation at that time as follows: Both Tribes continue to occupy the Wind River Reservation, which consists primarily of the reservation lands created by the Treaty of 1868, minus certain lands sold to the United States in 1872 and 1896. (H.R. Rep. No. 103-704, 103rd Cong., 2d Sess. (1994). (BATES SH12287) 42 . *Id.* at 1343. The Wind River Reservation retained Indian character. Only about 10 percent of the Reservation is owned by non-Indians. Of that 10 percent, approximately 25 percent is held in surface fee by the United States with minerals held in trust for the Tribes. The U.S. Supreme Court ended a decade-long dispute on Monday, June 25, 2018, regarding the boundaries of the Wind River Reservation by denying certiorari in the combined case of Northern Arapaho Tribe, et al. v. Wyoming, et al. and Eastern Shoshone Tribe, et al.

This case answers two questions: (i) were the boundaries of the Wind River Reservation (the "Reservation") diminished in 1905 by an agreement between the Northern Arapaho and the Eastern Shoshone (the "Tribes"), and (ii) do the Tribes have sovereignty over the City of Riverton, Wyoming? The Tribes asserted that the Reservation boundaries were those set forth in the 1868 Treaty, with the exception of the Lander and Thermopolis purchases. Thus, the Tribes claimed the Reservation included Riverton and the land north of the Wind River. The City of Riverton and State of Wyoming disputed that claim, asserting that the 1905 agreement reduced the boundaries of the Reservation, thereby establishing the current boundaries and excluding Riverton from the Reservation. The EPA asked the Department of the Interior for clarification, and the Solicitor concluded that the 1905 Act had not changed the boundaries established in 1868. The EPA granted the Tribes' application, and the State of Wyoming and Wyoming Farm Bureau Federation appealed.

The Court held that Congress clearly intended to diminish the reservation in 1905, thereby holding that the land north of the Wind River, including Riverton, belongs to the State of Wyoming. In a dissenting opinion (*see* Tom Morton story above), Judge Carlos Lucero argued that "the majority opinion upended long standing legal precedent holding that courts must err on the side of tribal sovereignty when it is unclear whether or not Congress intended to change the boundaries of a reservation." He asserted that under the 1905 Act, the disputed lands were held in trust and remained tribal lands.

The Tribes, without the EPA, then sought review by the Supreme Court. The Supreme Court's denial of certiorari means the Tenth Circuit's ruling will stand. The boundaries of the Reservation are the boundaries as previously diminished by the 1905 Act. This is a disappointing result for the Tribes, who, along with their attorneys, believe the decision weakens their taxation and criminal justice authority as well as their water rights¹¹⁸

After reviewing the Tribes' thorough legal argument and presentation of evidence, it seems obvious that both Courts made a biased mistake in their ruling against the Eastern Shoshones. The Plaintiffs should have won, not the Defendants. The issue with this decision is that (once again) history demonstrates that Tribal Lands have always been taken without proper compensation, while also operating under limitations imposed by the U.S. Congress, courts, and presidents. One could easily surmise that Tribal Lands will always be under attack; however, the Eastern Shoshone and Arapaho not only know this, but are prepared to defend their Lands, Peoples, and Cultures.

CASES INVOLVING NATIVE AMERICAN TRIBAL RIGHTS

Note: Whether and how Tribal Hunting Rights apply or are honored varies, depending on which court decides and which state and Tribe or Tribes are involved.

Three Different Responses to Treaty-Based Tribal Hunting or Other Rights

Herrera v. Wyoming, No. CV 2020-273 (Wyo. Dist. Ct. 4th Jud. Dist.): In the *Herrera v. Wyoming* (No. 17-532, May 20, 2019) Tribal Hunting Rights case that came before the U.S. Supreme Court in 2019, the Eastern Shoshone Tribe filed a friend of the court brief in support of the petitioner, *Clayvin B. Herrera*, arguing:

It is against this standard that the Court should approach the issue of whether the Crow Tribe's treaty-guaranteed off-reservation hunting rights have been extinguished. Properly taking into account the guardian-ward relationship, it is clear that removing the off-reservation hunting right either through the Wyoming Statehood Act or the Presidential Proclamation would have constituted a grave violation of the United States' trust obligations. Straightforward application of long-established treaty-interpretation principles does not call for such an outcome, and this Court should not allow it.¹¹⁹

According to Native American Rights Fund (NARF) Executive Director John Echo-Hawk, speaking for a story at the NARF website, "the Court's decision simply does what is right and recognizes that the Crow Tribe's treaty-guaranteed hunting rights continue to exist to this day. It ensures that state governments know that the promises that the United States government

made to Native Americans, through the terms of our treaties, can't be erased by state laws."¹²⁰ The NARF article continues,

Importantly, beyond the particular case of Mr. Herrera's hunting rights, the decision also affirms that treaty rights are not extinguished at statehood and that they stay in effect until extinguished by the treaty's terms or repealed by an act of Congress. ...In June 2023, the State of Wyoming dismissed its prosecution of Herrera with prejudice. The Wyoming Superior Court vacated his judgment and sentence.¹²¹

Secondly, the State of Wyoming attempted to deal with Eastern Shoshone Hunting Rights in the wake of the 2019 Supreme Court decision in *Herrera v. Wyoming* by submitting House Bill (HB) 83, concerning their treaty right to hunt beyond the borders of their reservation. According to the bill, that right could be exercised only on unoccupied lands and in a way that does not violate the state's conservation needs. The Eastern Shoshone pulled out of supporting HB 83, which would have allowed the governor of Wyoming to negotiate "hunting rights" with the Eastern Shoshone. Senator Affie Ellis, one of HB 83's sponsors and "a Navajo Nation member, had attempted to strip HB 83 of provisions that Eastern Shoshone and Shoshone-Bannock tribal members said violated their sovereignty."¹²²

Northwestern Band of the Shoshone Nation v. Greg Wooten and Ed Schriever: This is a case where the Northwestern Band of the Shoshone Nation filed a complaint in the Ninth Circuit Court of Appeals against agents of Idaho's Department of Fish and game on February 18, 2022.¹²³

In October 2023, the Ninth Circuit Federal Court sided with the Northwestern Band of the Shoshone Nation in its appeal against the State of Idaho in a dispute relating to Tribal Hunting Rights. The appeals court ruled the lower court must revisit claims pertaining to the state's interpretation of the 1868 Treaty of Fort Bridger. The Ninth Circuit Court's opinion refers openly to Shoshone history, highlighting that "under the Treaty, the affiliated Shoshone and Bannock Tribes ceded most of their territory to the United States," and that "the Shoshone, 'from time immemorial, roamed over, lived upon, occupied, and used' over 80 million acres of territory in present-day Idaho, Colorado, Utah, Nevada, and Wyoming."¹²⁴ In the opinion penned by U.S. Circuit Judge Jennifer Sung, the Biden appointee said that "the Treaty's terms...must be read in context and construed as they would naturally be understood by the Tribes," adding that the Treaty "plainly [does] not condition exercise of the reserved hunting right on the Northwestern Band relocating to a reservation."¹²⁵

"The Treaty imposes only four conditions on the Tribes' right to hunt," Sung wrote, noting that two conditions describe land where they may hunt: land belonging to the U.S. and unoccupied land.¹²⁶ The judge also said that the treaty only conditions Tribal rights to hunt "so long

as game may be found” on the unoccupied federal land, and...“so long as peace subsists among the whites and Indians on the borders of the hunting districts” (emphasis Sung’s).¹²⁷ Finally, Judge Sung points out “The Treaty does not expressly identify permanent residence on a reservation as a fifth condition of the hunting right,” adding that “the Tribes would not have naturally understood the [Treaty] terms...to mean that a tribe, or a band of the tribe, would lose its reserved hunting right if it did not move to a reservation.”¹²⁸

**Hunting Rights will continue to be an issue in the future, as state governments try to restrict the rights to hunt that are guaranteed in the Treaty of 1868.*

WIND RIVER RESERVATION: IRRIGATION RIGHTS

On July 3, 1868, the Eastern Shoshone Tribe was confined to a little more than 3 million acres, on what at the time was called the Eastern Shoshone and then ultimately the Wind River Reservation (Treaty of 1868, Article II). By guaranteeing, via Treaty provisions, that the land would be reserved for the Tribe, the U.S. government was also guaranteeing a right to the water on the land as well, as courts would eventually rule. It would take a century and a half, though, for the courts to work out what water was whose—and to begin to define what tribal owners of the water could and could not use their water for.

In the early 1900s, the Indian irrigation office of the U.S. Department of the Interior began but never completed an irrigation system for the Eastern Shoshone (later the Wind River) Reservation. Funding for the irrigation system depended on sales of the reservation lands that had been ceded in the 1905 agreement. Congress, in legislation Representative Mondell lobbied hard for, had never promised to pay the Eastern Shoshone and Northern Arapaho for the ceded lands; the only promise was to have the Department of the Interior act as a broker in selling the land to settlers. But the land did not sell well. Those settlers who did come had a hard time getting irrigation. In 1919, the Department of Interior’s Reclamation Service (soon renamed the Bureau of Reclamation) took over the most ambitious of the failed efforts and built the “Riverton Project,” now the Midvale Irrigation District. Construction was financed by money that Mondell managed to have allocated to it that year from Congress’ annual appropriations meant for Indian reservations.¹²⁹

“Winters Doctrine” Water Rights

The Inter Tribal Council of Arizona provides a clear and concise explanation of Native American Water Rights on its website (<https://itcaonline.com/>):

In the era of modern water law, tribes have buttressed their water rights by drawing on a 1908 Supreme Court opinion in a case involving the use of the Milk River in north central Montana. In that case, *Winters v. US*, the court

found that when the federal government created the Fort Belknap reservation it implicitly reserved the rights to use a sufficient amount of the river's water to fulfill the purposes of the reservation as a homeland for the Gros Ventre and Assiniboine People.

These “Winters doctrine” rights, now applied to tribes in Arizona and across the country, have a number of distinctive aspects to them.¹³⁰

- The rights are considered as having been established as of the date the federal government created the reservation involved. This means that tribal rights are nearly always senior to those of most other current users of Western water.
- The rights cannot be forfeited by non-use, as can the rights held under state law according to the principle of “prior appropriation.”
- Although the scope of these rights is sometimes quantified as being the amount of water necessary to support the “practically irrigable acreage” on a reservation, the rights, once quantified, can be used for non-agricultural purposes.
- The rights involve the future needs on a reservation, not just the present needs.¹³¹
- The “Winters doctrine” and the specifics derived from it in case law and in federal legislation form the basis of the water rights of the tribes in Arizona.¹³²

(For further information about the *Winters v. United States* case, and to read the US Supreme Court decision about it, go to [https://supreme.justia.com/cases/federal/us/207/564/.](https://supreme.justia.com/cases/federal/us/207/564/)) Under the Winters doctrine, when Congress reserves land (i.e., for an Indian reservation), Congress also reserves water sufficient to fulfill the purpose of the reservation.¹³³

One concern was that Winters might not have been advanced by the federal officials for the benefit of Indians and reservations, but rather for the potential alignment of non-Indian self-interests. Federal litigators and, most significantly, the United States Supreme Court have often resisted political winds to hold the line on depreciation of Indian Rights absent clear congressional instructions otherwise. This phenomenon and the legal principles invoked by the Court made Winters a coherent part of Indian law jurisprudence and a water law aberration.¹³⁴

Writing about a water case—*In re The General Adjudication of All Rights to Use Water In the Big Horn River System*, 835 P.2d 273 (Wyo. 1992), aka Big Horn III,—author Tom Kinney details a Wyoming Supreme Court ruling against the Wind River Tribes in the matter of exercising their Winters doctrine water rights, and analyzes the possible ramifications of this adverse Wyoming Supreme Court decision.¹³⁵ This ruling allowed the State of Wyoming to infringe on and control the Eastern Shoshone's 1868 Treaty and legal rights. The two previous Big Horn cases are listed below for readers' information and potential review:

In re General Adjudication of All Rights to Use Water in the Big Horn River System, 753 P.2d 76 (Wyo. 1988) (Big Horn I), affirmed sub nom. Wyoming v. United States, 49 U.S. 406 (1989).

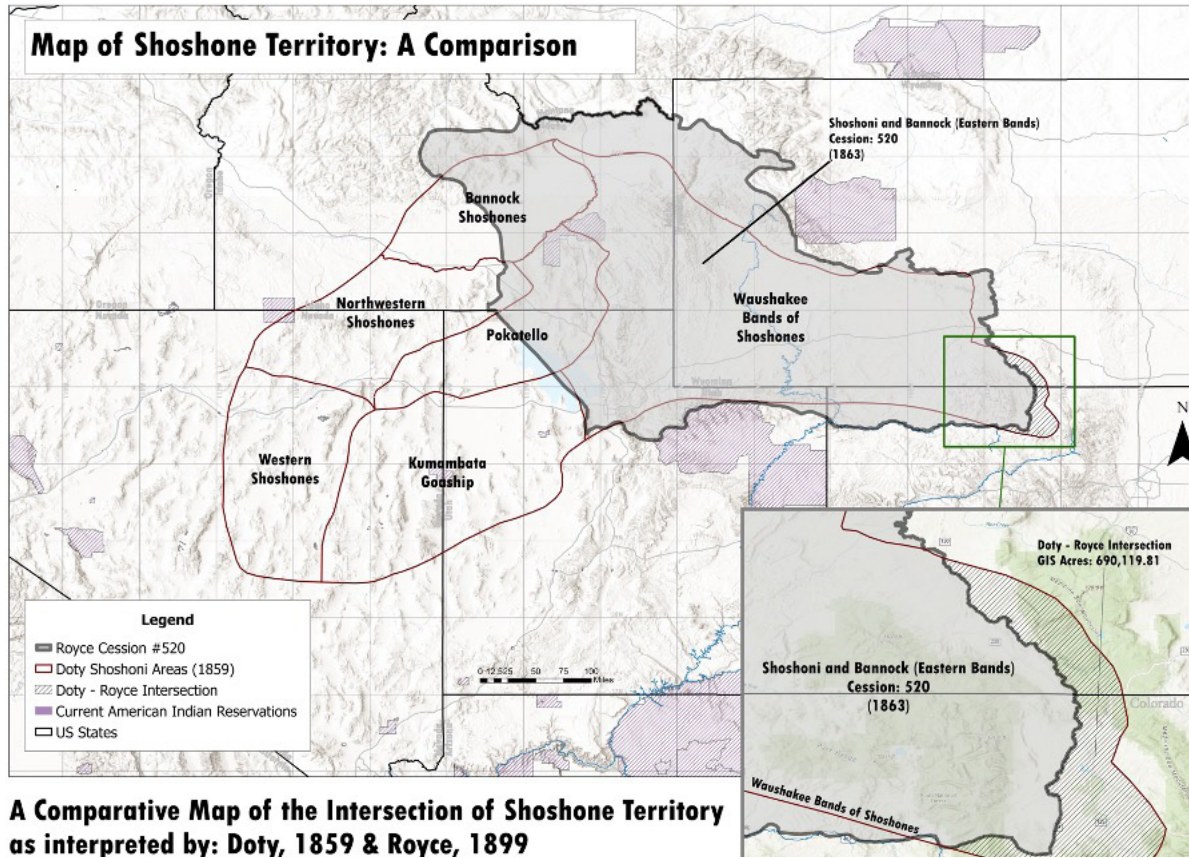
In re General Adjudication of All Rights to Use Water in the Big Horn River System, 835 P.2d 273 (Wyo. 1992) (Big Horn II).

Since the Big Horn III verdict, little has changed on the main stem of the Wind River. Virtually no “futures” water rights are in use as of early 2019. The Wyoming Water Development Commission has funded studies for a reservoir in the upper reaches of the Wind River basin that could help put some of the futures rights in use for the Tribes’ purposes and provide some water-supply security for non-reservation irrigation. Inaugurating and seeing such a project through to completion would, however, require tribal-state agreement and cooperation on location, management, and funding. As of yet, a way for the Eastern Shoshone and Northern Arapaho People to fully benefit from their full (and senior) water rights has not yet emerged.¹³⁶

Another attack on Tribal Water Rights occurred on June 22, 2023, when the United States Supreme Court refused to hold the United States accountable for water rights it holds in trust for the Navajo Nation. The Court’s decision in *Arizona v. Navajo Nation* held that the United States did not have an affirmative treaty or trust obligation to identify and account for Navajo Nation water rights in the Colorado River. While the Court agreed Tribal Nations indeed have water rights under the *Winters* doctrine, the Court nevertheless concluded there was no obligation to take steps to secure, or even identify, the water needed for the reservation. The Eastern Shoshone and all Western Tribes will have to respond to this threat and protect their water rights.

SHOSHONE TERRITORY IN COLORADO: ROBERTSON MAP COMPARISONS & OVERLAYS

Trying to determine Shoshone Territory in Colorado based on the 1863 Treaty Doty and Royce 520 Cession maps can result in a mixed bag that is perhaps inaccurate. The above mapping analysis done by Dr. Joseph Robertson in 2023 identifies a major discrepancy between the (1859) Doty map presented to the U.S. Senate for approval of Shoshone Territory designated in the 1863 Treaty and the Royce Cession 520 map. His findings show that east of the Green River and north of Yampa the two maps diverge by 40 or 50 miles toward Steamboat Springs in modern-day Colorado. Taking Dr. Robertson’s map into account, a case could be made that both Doty’s and Royce’s cession maps are inaccurate.



A Comparative Map of the Intersection of Shoshone Territory as interpreted by: Doty, 1859 & Royce, 1899, by Dr. Joseph Robertson, 2023, Mato Ohitika Analytics LLC.

Further analysis and the presentation of this information to the proper U.S. government agencies and perhaps the U.S. federal courts may offer new and more exact evidence that could bolster modern ownership claims of this land by the Eastern Shoshone, and assist with the following findings being implemented to recover a Shoshone Sacred Area.

SACRED SHOSHONE SITE IN NORTHWESTERN COLORADO

Doing the research for this report has revealed evidence strongly supporting the idea that Washakie and the Eastern Shoshone were frequent visitors to the Browns Pool (or Park) and Vermillion Canyon areas throughout his life. Several authors have said they went there to “trade, hunt and race horses with the Ute, Navajo and other tribes,” but it is quite probable that Washakie and other Shoshones visited this area to obtain *Puha*, or “good power.”¹³⁷

THE SPIRITUAL REASON TO RETURN THIS LAND TO THE EASTERN SHOSHONE

In his article about a recent archaeological discovery, Peter Faris describes the Vermillion Canyon Medicine Wheel area this way:

Vermillion Canyon in Brown's Park in northwestern Colorado, an area occupied prehistorically by the Eastern Shoshone, has long been known for its concentration of rock art produced by the Fremont culture between about AD 500-1300. The recent discovery of a medicine wheel in this canyon suggests that it was a place of great spiritual significance to the later Shoshone. This agrees with ethnographic records of Shoshone belief in rock art sites as sources of *poha* or medicine power. Additionally, because of its canyon-bottom location, it calls into question archaeoastronomical interpretations. Whatever its purpose, the presence of the medicine wheel in this *Poha Kahni*, House of Power, marks Vermillion Canyon as sacred land to the prehistoric and proto-historic Shoshone inhabitants of the region.¹³⁸

Faris uses Demitri Shimkin's work to explain that "the mythological beings and animals of nature and their power (*poha*) are of central importance; the shaman is called *pohakanti* "(one who) has power."¹³⁹ Yet Shimkin, says Faris, also reminds us that "the relation between shaman and power is not one of control but one of supplication and dependency."¹⁴⁰ Stamm adds that

The men who led the local [Shoshone] bands and divisions possessed *puha* or 'medicine power.' ...which enabled individuals to achieve military or economic success. ...Whatever gifts of power a person might obtain were used for the benefit of the family, band, or collective tribe. The exercise of power in war, hunting, or healing contributed to the overall welfare and health of the larger community, not just the one endowed with *puha*.¹⁴¹

It is not difficult to believe Washakie and other Shoshone knew this as well, and certainly utilized *puha* for the people and not for themselves. Faris goes on to further explicate that

One theme found in the rock art of Vermillion Canyon is the portrayal of a pair of figures standing side-by-side, appearing to hold hands. One example of this theme from a dense rock art site on a nearby ranch has been named "The Friends" and was adopted as the logo of the Colorado Archaeological Society. ... Another example, this from Vermillion Canyon proper, ...was identified as "The Medicine Man and Medicine Woman" by John Tarnesse, a Sun Dance Chief and

spiritual leader of the Eastern Shoshone in Fort Washakie on the Wind River Reservation [Tarnesse relayed this information to Faris in a personal communication]. It is possible that these paired figures also represent the mythical twins of North American native mythology.¹⁴²

Faris credits Ake Hultkrantz with “[identifying] the Sacred Twins theme among the Shoshone in their tales of Coyote and his brother Wolf. ‘It is a remarkable fact that possibly dates from a distant prehistoric age that the wolf, brother or twin of the culture hero, does not occur only among the Algonkin but also among the Shoshone and their neighbors (among whom Wolf faces the mischievous Coyote, “Little Wolf”).’”¹⁴³

According to Richard Hauk, Faris says, “the four spokes in the Brown’s Park Medicine Wheel are roughly aligned to the cardinal directions,”¹⁴⁴ and also, according to Paul Carlson, possibly “symbolized natural harmony” through the number four: “four seasons, four ages in human life...four elements above the earth (the sun, the moon, the stars and the sky).”¹⁴⁵ Dorcas Miller, according to Faris, posits “the seven stones in each spoke of the medicine wheel may refer to the Pleiades, which in Shoshone mythology is Coyote’s family, or to the stars in the Bigger Dipper, which in Shoshone mythology is ‘hunting with a rabbit net.’”¹⁴⁶

Faris tells us Anne Smith has related Shoshone tales in which Coyote and Wolf were brothers,¹⁴⁷ and finishes on an introspective, mystical note, reflecting on what the Shoshone of old might have seen and felt when they found themselves in the presence of that place:

It is possible that the prehistoric Shoshone, entering the Brown’s Park area in general and Vermillion Canyon in particular, saw in the paired figures of the rock art the Sacred Twins of their mythology, and thus saw that location as sacred ground. Such a location, known as a *poha kahni*, house of power, would be a natural choice of site for the later construction by a shaman of a medicine wheel for ceremonial purposes. ...

This suggests that Vermillion Canyon [and Brown’s Pool] in northwestern Colorado [are locations] that [were, and are,] of rich spiritual significance to the Shoshones.¹⁴⁸

It is obvious that Washakie and many Shoshone knew (and know) of this sacred area and the sites within it. This land could bring Eastern Shoshone back to Colorado, as in the 1863 Treaty, based on the following:

On November 15, 2021, Interior Secretary Deb Haaland and Agriculture Secretary Thomas J. Vilsack signed **Order No. 3403**, the “Subject Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters.”¹⁴⁹ Order No. 3403 contains five sections, and Section 1 defines the purpose of this order is

to ensure that the two departments and their component Bureaus and Offices are managing federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes, including the Native Hawaiian Community; that such management is consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes; and, that such management fulfills the United States' unique trust obligation to federally recognized Indian Tribes and their citizens.¹⁵⁰

Section 4 of Order No. 3403 further provides:

Section 4. Federal lands and waters, including wildlife and its habitat.

In making management decisions for Federal lands and waters, or for wildlife and their habitat that impacts the treaty or religious rights of Indian Tribes, the Department will incorporate the Principles of Implementation established in Section 3 of this order.

President Biden has also issued several Executive Orders directing agencies to coordinate with federally recognized Indian Tribes for matters covered in Order No. 3403, (including **Executive Order 13007, Indian Sacred Sites**, signed by President Bill Clinton in 1996), directing

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,

(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and

(2) avoid adversely affecting the physical integrity of such sacred sites.

Where appropriate, agencies shall maintain the confidentiality of sacred sites.¹⁵¹

Presently the area of Vermillion Canyon and Brown's Pool in the state of Colorado are under the following Federal Ownership and Control of the Department of the Interior and its Bureau of Land Management (BLM) as a National Wildlife Refuge. The BLM and the Denver Archaeological Society are both concerned about the future of this sacred area. On December 8, 2023, I had a phone conversation with Peter Faris, a member of the Denver Archaeological Society, an author cited in this report and in the references, and we spoke with regard to Vermillion Canyon and Brown's Pool. Faris reported concerns over the past 40 years of negative effects of non-approved human contact with that area, which is not sanctioned by the

Bureau of Land Management. He reported that while visiting the site in the company of a BLM archaeologist, whom he had sworn to secrecy, “we found a car from California parked nearby. The site has apparently made it onto the New Agers circuit. Let’s hope that they don’t feel the need to bury offerings there to mess up the archaeological record.” He also told me that he will assist the Eastern Shoshone in any way needed to protect the area and their potential use of the area. The BLM has concerns that the present lands are being negatively impacted by human visitation and require additional monitoring, protection, and controlled human contact.



Refuge Map [of Browns Park National Wildlife Refuge], by U.S. Fish & Wildlife Service, 2022 (<https://www.fws.gov/media/2022-refuge-mapjpg>).¹⁵²

I recommend that the Eastern Shoshone, along with the Department of the Interior, U.S. Fish & Wildlife Service, and the Bureau of Land Management implement the aforementioned Executive Order 13007, and Section 4 of Order No. 3403 for the Eastern Shoshone to manage the Vermillion Canyon and Brown’s Park areas. I further recommend that the Vermillion Canyon and Brown’s Park sites be placed into East Shoshone Trust. See the following brochure and map for location and information on the sites.

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Eastern Shoshone Tribe

Truth, Restoration, and Education Commission (TREC) Recommendations

1. We recommend that the Congress of the United States compensate the Eastern Shoshone for illegal trespassing on their land from 1834 to 1868. In 1834, Congress passed the Indian Trade and Intercourse Act, which prohibited trespassers on their land in northeastern Colorado. According to Article 11, Trespassers should have been fined \$1,000 and removed. This illegal presence on the land caused harm to the land, and a loss of game animals. This economic loss has never been included in any compensation for the violation of Shoshone rights.¹

2. The Vermillion Canyon and Brown's Pool area has been a sacred area of the Shoshone for over a thousand years. A member of the Denver Archeological Society has studied the area for over forty years. The area is presently owned and managed by the U.S. Department of Interior. We ask that the State of Colorado cooperate and assist with the Eastern Shoshone if they desire to manage under Executive Order 13007 (Indian Sacred Sites) or place this land in Tribal Trust.²

3. We call upon the State of Colorado to assist and acknowledge that Shoshone and other tribes in Colorado had their land illegally mapped from 1824 to 1863 by Expeditions, including Gunnison's, that were funded and ordered by Congress. This trespass and illegal venture led to land theft and the building of illegal roads, telegraph lines, and railroads. And that any abandoned railroad and other such lands be returned to the Tribes that owned that land before Treaties took it from them.³

4. The State of Colorado must pass laws and cooperate with the Eastern Shoshone to recognize and implement their right to hunt and fish on former treaty lands within the external boundaries of the State of Colorado.⁴

5. The State of Colorado and the United States government must recognize the Shoshone water rights for the area where they ceded treaty land within the State of Colorado.⁵

6. The State of Colorado and the United States government must recognize the Shoshone mineral rights for the area where they ceded treaty land within the State of Colorado.⁶

7. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Eastern Shoshone Tribe and other Tribes that may be located within the external boundaries of the State of Colorado access to funding that is available to other counties, municipalities, and non-profits. The State of Colorado should support all efforts for the Eastern Shoshone to protect sacred sites in Colorado.⁷

ENDNOTES

1. TWENTY-THIRD CONGRESS. SESS. I. CH. 161. 1834, June 30, 1834. STATUTE I.CHAP. CLXI.- to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers. “Be it enacted by the Senate and House of Representatives of the United States, of America, Parts of the States of America, in Congress, assembled, That all that part of the United States west of the Mississippi.... and, also, that part of the United States east of the Mississippi River, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.”
2. Brown’s Park National Wildlife Refuge, Irish Canyon, and the Vermillion Falls are considered sacred sites by the Shoshone people, and action is needed to protect them from vandalism and theft of petroglyphs in Vermillion Canyon. This should be a high priority.
3. The invasion without permission was a serious problem for the Shoshone People. There must be a full investigation into the details of the illegal activities, and the Shoshone should be involved in the investigation. If there were measurable damages, then the Shoshone needed to be compensated for the trespass and damages.
4. There is no evidence in the treaties that the Shoshone specifically relinquished hunting and fishing rights in the State of Colorado.
5. The Shoshone ceded land in Northwestern Colorado, and they did not specifically release their water rights, which are inherent in Treaties.
6. The Shoshone ceded land in Northwestern Colorado, and they did not specifically release their surface and subsurface mineral rights, which are inherent and reserved in Treaties.
7. The current legislation does not allow for Tribal Nations to access GOCO resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes. According to the U.S. Forest Service there are over 200 sacred sites that are not currently protected.

Arapahos

Expulsion of the Arapahos from Colorado 1851-1864

Note: This report derives from published sources—treaties, statutes, books and articles by historians and anthropologists. The Arapaho people possess oral history and cultural knowledge that would be needed to accurately fill out this narrative.

PRE-1851

Arapahos established a mobile, horse-mounted culture, with bison (buffalo) as the principal source of nutrition and materials. Hunting buffalo enabled them to obtain food, shelter, and robes to trade for needed vitamins, carbohydrates, weapons, horses, and other goods. The Arapaho were renowned traders; dealing with other language and cultural groups was integral to their culture. Arapahos inhabited an area stretching from the Powder River Basin (current northeastern Wyoming) to the Upper Arkansas River (current southeastern Colorado), thus covering the plains of what is now Colorado. The principal social organization was bands of related people, though bands were fluid, and individuals or families easily shifted among them. Relatively small bands could maintain mobility to find enough grass for horses and bison for sustenance without overtaxing the land. About 1835 there began a rough separation of Arapahos into northern and southern divisions, the northern bands inhabiting the Powder River area and the southern bands the Platte-Arkansas region. Yet Arapahos shared a language, religious and cultural practices, annual gatherings, and a consultative consensus-based decision-making system.¹ The mid-19th century Arapaho population, northern and southern combined, was about 3,000. This was a huge reduction, due to hardship and disease (smallpox and cholera introduced by increased contact with whites), from a population of nearly 10,000 earlier in the 19th century.²

It is important to emphasize that the Arapaho were and are a highly adaptable people. They probably moved onto the plains from the upper Missouri River region, where they relied more on a combination of crops and hunting. On the plains they became outstanding horsemen and breeders of horses. They developed technology to transport their belongings over long distances, navigating hundreds of miles to harvest bison, find fresh grazing for their many horses, and join their kinsmen for ceremonies and decision-making. As they contacted other peoples they established trade, formed alliances, and adopted new technologies. Portrayals by whites of Arapahos as “primitive” or “savage” were false, ignorant, racist, and self-serving.

Prior to the migration of thousands of whites through and to the plains the Arapahos were a prosperous people, despite enduring epidemic diseases. As documented in the study, “The Slaughter of the Bison and Reversal of Fortunes on the Great Plains,” during the bison era the Plains Indians were among the tallest people in the world. They enjoyed a superior level of nutrition and health. “Due in part to the plentiful nature of the bison and the ability to store its food products for years, the bison peoples were arguably the wealthiest peoples in North America and at least as well off as their average European counterparts.”³

But already in the 1840s bison grew scarcer. Invasive white migration across the plains destroyed grazing land and scared buffalo away. Lieutenant John C. Fremont wrote that in the 1830s “a traveler might start at any given point south or north in the Rocky Mountain range ... and during the whole distance, his road would always be among large bands of buffalo, which would never be out of his view.” Later, in 1843, Fremont wrote: “The buffalo occupy but a very limited space, principally along the eastern base of the Rocky Mountains.”⁴ “In the winter of 1846-47, when Lieutenant J.W. Albert traveled through Arapahoe country, he noted that the buffalo had almost deserted the Arkansas River since the grass had been worn away by wagon trains; already Indians had difficulty subsisting here in winter and spring.”⁵ “In 1849 and 1850, years of the California gold rush, ... forty thousand whites swept through Indian country,” compared to 1843 when only a thousand crossed.⁶

Increasingly, Lakota Sioux were moving into the Upper Platte region. They were pushed by the constant pressure of the U.S. government on Indian Territory, forcing tribes westward, as well as by the Lakotas’ development into a populous, powerful political entity standing in the way of U.S. westward expansion.⁷ “(Indian) Agent Thomas Fitzpatrick stated in 1848 that the Arapahoes resented the intrusion of Sioux along the south fork of the Platte to the main river and on Lodgepole Creek. The agent noted that more than 2,000 Sioux were on the headwaters of the Platte, where a few years ago there had been none.”⁸ This continual forcing by whites of Indigenous people into smaller areas negatively affected the Arapahos’ bison supply. Note also that, while later in the 1850s and 1860s, the Arapahos became closely allied with the Cheyennes, in the 1840s they sometimes disputed the Cheyenne presence in the Upper Arkansas River country and northward. This created further pressure on Arapaho resources.

Euro Americans passing through Indian (or Arapaho) Territory to get to California and the

EXPULSION OF THE ARAPAHOS FROM COLORADO

Pacific Northwest comprised the main element of destructive white migration in the 1840s. Invasive migration along the Santa Fe Trail, which followed the Arkansas River in what is now Kansas and southern Colorado, destroyed the grasslands and dispersed the buffalo, as did the movement of thousands of whites along the South Platte (Overland Trail) in what is now northern Colorado and the Oregon Trail through present-day Wyoming. Invasive migration along the Santa Fe Trail, which followed the Arkansas River in what is now Kansas and southern Colorado, destroyed the grasslands and dispersed the buffalo. Similar patterns of devastation occurred elsewhere as thousands of whites moved along the South Platte (via the Overland Trail in what is now northern Colorado) and along the Oregon Trail through present-day Wyoming.

Indigenous response: The inundation of their territory by white settler migrants caused the plains tribes to increase attacks on destructive wagon trains along the Santa Fe Trail, including attacks where young Arapaho warriors joined Comanches. The main Arapaho leaders, such as Little Raven and Little Owl, opposed this raiding because they considered it ineffective in the face of the white deluge. Their hope was to negotiate a viable agreement for containing the white migrants to designated corridors and maintaining their people's access to the Great Plains bison. The situation grew ever more tense.

U.S. response: In 1846 the U.S. government established the Upper Platte and Arkansas Indian Agency and appointed Thomas Fitzpatrick, a Plains trader, guide, and sometime U.S. Army member, as agent. Fitzpatrick and Superintendent of Indian Affairs Thomas Harvey advocated for a treaty to resolve issues with the Plains tribes. "But to make treaties with other nations—which was then the legal status of the tribes—required an authorization by Congress, the appointment of Commissioners, and the appropriation of funds—all of which would consume five years."⁹ The inability of the U.S. government to respond in meaningful time to the white invasion and conflicts on the Plains was a constant problem in this period. Whites invaded illegally, Indigenous people resisted, the U.S. government responded years later.

Constant disputation and lack of coordination between the U.S. Department of Indian Affairs and the U.S. War Department also factored into the failure of the U.S. to fairly treat the Arapaho. For example, in 1848, while Fitzpatrick attempted to convince Arapaho, Lakotas, Brulé, and other nations to gather for a treaty council, Lieutenant Colonel William Gilpin and a battalion of Missouri Volunteers pillaged the land between the Arkansas and Canadian rivers, "rendering the area temporarily unfit for human habitation."¹⁰ This was the War Department's attempt to protect wagon trains traveling the Santa Fe trail. As historian Margaret Coel states, "the government's double-pronged tactic of sending an agent to talk peace while its troops despoiled the land did little to relieve the growing pressure felt by the plains tribes."¹¹

The United States, concerned about raids on travelers, had first attempted to intimidate the Arapahos and Cheyennes by establishing forts along the immi-

grant routes. Fitzpatrick complained that army officers would not cooperate with him, and he feared trouble from soldiers making “wanton and uncalled for attacks on Indians.”¹²

The Arapahos were forced into a situation where there were no longer enough bison to feed themselves. They became more and more dependent on trading with whites for supplies. At the same time, the market for robes contributed to the reduction of buffalo.

The U.S. government’s frequent deployment of volunteer or irregular recruits from western states and territories further inflamed the Plains conflicts. These troops were frequently poorly trained, undisciplined, and prone to racist ideology. Frequently they committed atrocities.

THE TREATY OF FORT LARAMIE 1851 (HORSE CREEK TREATY)

Fitzpatrick finally gathered multiple tribes near Fort Laramie (present-day Laramie, Wyoming) in 1851. Ten thousand members of these nations—Oglala Sioux, Assiniboine, Arapaho, Shoshone (attended though not invited), Brule Sioux, Mandan, Crow, Arikara, Rees, Cheyenne, Gros Ventre, Hidatsa arrived at the parlay site, the mouth of Horse Creek on the North Platte River, just east of the present Wyoming-Nebraska border. Negotiations occurred between September 8 and September 15, 1851, when the treaty was signed.

Interpreters for the Arapaho in 1851 were John Poisal, a white trader who had married MaHom, sister of future Arapaho leader Left Hand (Niwot) in 1833, and Friday (Teenokuhu), a bilingual Northern Arapaho who had been adopted by Agent Fitzpatrick, studied in St. Louis, and returned to his people.

Agent Fitzpatrick was married to the daughter of Poisal and MaHom. He had more appreciation and knowledge of tribal nations than subsequent government negotiators.

The 1851 treaty’s provisions as they pertained to the Arapaho:

The U.S. government’s principal objective was to gain protection for whites crossing the plains. The first three treaty articles theoretically accomplished this by forbidding both U.S. citizens and Indian nation members from engaging in hostilities against each other:

Article 1: The aforesaid nations, parties to this treaty, having assembled for the purpose of establishing and confirming peaceful relations amongst themselves, do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace.

Article 2: The aforesaid nations do hereby recognize the right of the United States Government to establish roads, military and other posts, within their respective territories.

Article 3: In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty.¹³

Thus, the written treaty stated that U.S. troops were mandated to protect the Arapaho and other Indian nations from attacks, damages, and thefts committed by white migrants. Importantly for Arapahos, protection from “depredations by the people of said United States” had been discussed during the treaty council at Horse Creek. As anthropologist Loretta Fowler explained, the process of negotiating the treaty met the Arapahos’ cultural criteria for trustworthiness:

- Fitzpatrick’s superior, Superintendent D.D. Mitchell provided gifts to each tribal nation present. Gifts were a tangible sign of commitment and respect.
- “The women constructed an arbor and council lodge. Their participation validated the peaceful purpose of the council. A soldier’s wife was seated with the dragoons as a guarantee of peaceful intent on the part of the commissioners.”
- Both Northern and Southern Arapahos were there.
- “All participated in a ceremonial smoking ritual that served, in the Native view, as an oath for truthfulness and a guarantee that promises would be kept.”¹⁴

“To Arapahos and Cheyennes, speeches of the council after a smoke were viewed as the actual ‘treaty,’ and White Antelope later insisted that the treaty obligated troops to protect, not attack, Natives.”¹⁵

The treaty clearly designated lands, today comprising the plains of eastern Colorado and extending out into Kansas, as belonging to the Arapaho and Cheyenne:

The territory of the Cheyennes and Arrapahoes [*sic*], commencing at the Red Bute [*sic*], or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the head-waters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fe road; thence in a

northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning.

It is, however, understood that, in making this recognition and acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.¹⁶

Importantly, the treaty did not restrict Arapahos from hunting or traveling through other territories that they traditionally had used. This was critical to continuing their established trading relationships and following the bison herds.

While the treaty recognized the plains between the North Platte and Arkansas rivers as Arapaho and Cheyenne national territory, it also claimed the right of the United States to build roads and forts in that territory. This provision would permit continued destructive white migration through tribal lands. Article 4 stated that tribes must make “restitution or satisfaction for any wrongs committed ... by any band or individual of their people, on the people of the United States, whilst lawfully residing in or passing through their respective territories.” While this was an attempt to honor the Arapaho custom of reparations for wrongs,¹⁷ this ambiguous provision, highly open to interpretation, allowed destructive migration to continue and restricted the tribes from taking action to protect their territory. If they defended their territory from destructive actions by white migrants, it was likely to be deemed a “degradation,” and this provision permitted the U.S. military to impose collective punishment for actions taken by individual Arapahos.

As compensation for the destruction of buffalo range, the 1851 treaty committed the U.S. government to paying \$50,000 per year (approximately \$1.9 million in 2022 dollars) for 50 years, to be divided proportionately among the tribes that signed, with the possibility of an additional five years at the U.S. President’s discretion. However, in 1852 the U.S. Senate refused to ratify the treaty unless the term of payments was reduced to ten years, with an additional five at the U.S. President’s discretion. Further, language in the treaty restricted the promised compensation by stating that the \$50,000 per annum would be provided as “provisions, merchandise, domestic animals, and agricultural implements ... as may be deemed best adapted to their condition by the President of the United States.”¹⁸ Treaties during this period were littered with such condescending language and provisions and inimical stipulations.

The final article, Article 8, exemplifies how the 1851 treaty gave the U.S. president disproportionate power to manipulate the provisions to the disadvantage of the tribes:

It is understood and agreed that should any of the Indian nations, parties to this treaty, violate any of the provisions thereof, the United States may with-

hold the whole or a portion of the annuities mentioned in the preceding article from the nation so offending, until, in the opinion of the President of the United States, proper satisfaction shall have been made.¹⁹

Nowhere in the treaty is there provision for the tribes to enforce violations by the U.S. or its citizens. They were expected to rely on the protection of the U.S. military, but this was not forthcoming.

Based on their expectation that their territorial claims would be honored and that they would be protected from the hordes of migrants, the Arapahos made a major concession to the U.S. Article 6 called for

The parties to the second part of this treaty having selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.²⁰

The Arapaho system of governance did not have a “head chief.” Their complex system of esteemed elders, band leaders, men’s age societies with specialized responsibilities, and women’s organization of camp life and transportation was opaque to the Americans. Yet the Arapahos conceded to naming a representative to meet Article 6:

During the treaty council, Arapaho band chief Cut Nose addressed the importance of the new head chief role, telling the commissioners that “whatever he [the chief] does, we will support him in it, and we expect Father [the Indian agent] that the whites [American government] will support him.” Without respect and annuity goods from the Americans, the chief would lose the authority to persuade Arapahos to cooperate. Cut Nose stressed that peace depended on the annuities: “You, Grand Father [Mitchell] are doing well for your children [the Arapahos and Cheyennes] in coming so far and taking so much trouble about them. ... We have to live on these streams and in the hills,” and the immigrants “should give us game for what they drive off.” An Arapaho elder, Authonishah, sanctioned the agreement: “The whites want to be good to us [by promising peace and annuity goods]; let us not be fools and refuse what they ask.” So the Arapahos selected Little Owl, a well-known and respected band leader who was a liaison between his people and the Americans, as head chief. He and another Northern Arapaho, Big Man, and the Southern Arapaho Cut Nose signed the treaty.²¹

Again, the importance of what was said during the treaty negotiations was as important, and probably more important, to the Arapahos than the boilerplate language submitted to the U.S. Senate:

The Treaty of Fort Laramie was a classic testimony to the cultural gulf between the Americans and the Indians of the plains. Jefferson Davis, writing about Indian policy at a later date, captured part of the problem when he noted that “in the treaty council oftentimes more is spoken than written.” As a result, he said, “the Indians have remembered whatever was impressively spoken, and ... the Government has necessarily executed only the terms of the treaty as it was written and ratified. With such different perceptions, both Indians and Whites left the treaty grounds convinced that they had won a major victory and determined to make no more concessions to the other.”²²

The Treaty of Fort Laramie 1851 (Horse Creek Treaty) is not included in the U.S. Archives catalog of registered treaties, evidently because it was never legally ratified. However, the treaty was recognized as valid in subsequent U.S. court rulings and in the later devious attempts by invading and squatting Euro Americans to gain title to the land they occupied.

1851 TO 1861

The Arapahos probably left Horse Creek with some hope. Had the 1851 treaty been enforced by the U.S. government and had white migration lessened after the California gold rush, the Arapahos might have arrived at a *détente* with the States. Certainly the Arapahos, along with the Cheyennes and Sioux, strived to adhere to the terms of the treaty.

Instead, the 1850s became a time of misery for the Arapahos. Early in the decade thousands of Americans continued to pass along the trails, killing bison or scaring them away, and destroying ever wider swaths of grassland. Game was scarce. The Southern Arapahos grew more dependent on the annuities they had negotiated for and trade with migrants, traders, and soldiers. Buffalo robes became trade commodities, brought to white trading posts to be exchanged for provisions, then shipped eastward. This integration of bison robes into the market economy put ever-increasing pressure on the bison population.

In the early 1850s the hordes of migrants crossing the plains were mainly headed to California (made a U.S. territory 1848, admitted as a state in 1850); Oregon (territory 1846, statehood 1859); Utah (territory 1850, statehood 1896); or New Mexico (annexed to U.S. in 1848 after the U.S.-Mexican War). But increasingly prospectors, traders, and U.S. troops remained on the plains. Reports of gold found at the mouths of canyons in 1850, 1857, and 1858 reached the eastern U.S. The Panic of 1857, a banking crisis, caused unemployment and loss of credit

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for thousands of Euro Americans. Many headed west in hopes of striking it rich. The prospectors tended to be single men, or men separated from their families, and poorly educated.

In 1855, the Smoky Hill Trail, a shorter route from northwest Kansas to Bent's Fort on the Arkansas River, was established. This resulted in thousands more migrants traveling through the heart of the Arapahos' buffalo range.

The discovery of a major gold vein at what became Black Hawk, Colorado, set off the Pikes Peak gold rush in 1858. Between 1858 and 1861, 100,000 illegal immigrants—more than 30 times the Arapaho population, South and North—arrived at the foot of the Rockies. Kansas Territory, formed by the U.S. Congress in 1854, included the plains between the North Platte and Arkansas Rivers, lands belonging to the Arapahos and Cheyennes. Yet in 1855 the Kansas territorial legislature proclaimed this region to be “Arapahoe County,” open to white settlement.

From the outset, Arapaho County was legally questionable. The Kansas-Nebraska Act of 1854 had established the western boundary of Kansas at the summit of the Rocky Mountains, but the act also expressly provided that Indian rights would remain unimpaired until extinguished by treaty. Furthermore, it declared that all Indian lands “shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Kansas.”²³

In fact, according to the Indian Non-Intercourse Act of 1834, Americans who violated these prohibitions were subject to fines and removal by military force. But the invaders were never removed or fined, and illegal settlement grew worse.

Beginning in 1858, gold-crazy squatters, claiming to be using the Federal Townsites Act of 1844—which did not apply to unceded Indian lands—established illegal towns at the confluence of Cherry Creek and the South Platte: Montana Town Company, Saint Charles, Auraria, and Denver. Boulder City Town Company was illegally founded in 1859.

On October 24, 1859, invading settlers formed the extralegal, never-federally-recognized territory of Jefferson, even sending a delegate to the Congress to lobby for “Jefferson's” recognition.

Surveying parties began crossing, mapping potential routes for a transcontinental railroad. John Evans, who would become governor of Colorado Territory in 1862, had already profited from building railroads in Illinois. By the early 1860s he was a commissioner of the Congressionally established Union Pacific Railroad Commission and eager to have those tracks pass through Colorado.

In the mid-1850s arbitrary U.S. military actions against Plains Indians escalated. The troops rarely distinguished between tribes and imposed collective punishment rather than

identifying the actual perpetrators of “depredations.” In response to the unceasing, destructive white migration, young warriors raided wagon trains and squatters’ homesteads, killing some trespassers and taking others captive. Arapaho leaders—Little Raven and Left Hand in particular—opposed this because they recognized the overwhelming numbers and technology of the whites. “On the North Platte in 1853, soldiers killed several Sioux without provocation. Sioux leaders complained that the soldiers did not protect them but, rather, were the first ‘to make the ground bloody.’”²⁴ When Agent Fitzpatrick died in 1854, his replacement, John W. Whitfield, claimed that Indians would have to be “whipped into submission” before treaties addressing the changed situation in Colorado could be negotiated.²⁵ After several incidents where Sioux retaliated for attacks by U.S. troops, General William Harney launched a campaign in September 1855. “Harney attacked any Sioux he found north of the Platte. He killed eighty-six men women, and children and took seventy hostages. ... Over (Upper Platte Indian Agent) Thomas Twiss’s objections, Harney also threatened the Northern Arapahos and Cheyennes, who had not fought the army.”²⁶ In the summer of 1857 U.S. Colonel Edwin Sumner marched troops over the Colorado plains attacking any Indians he could find, burning a Cheyenne village and destroying its entire winter food supply. Though Sumner attacked Cheyennes, his marauding prevented the Southern Arapahos from going out to hunt, intensifying their starvation and dependence on federal rations. Harassment by U.S. troops and their failure to protect Arapahos from depredations by immigrants continued.

Cholera, smallpox, and venereal disease—results of increased contact with white Americans—continued to take a toll on the Arapahos.

Leaders, especially Arapahos, worked on diplomatic overtures to try to find a way to coexist and to be part of the local economy rather than marginal to it. In the spring of 1859 Little Raven, head of the major Arapaho band and an important liaison, reportedly held a council with local American leaders in Denver and Auraria who told him that Americans wanted to be on good terms with the Arapahos and hoped that they would not trouble them or steal from them. Arapahos wanted the settlers to understand that they could take the gold but not the land. Little Raven said he hoped they would not be “mean” (stingy). Little Raven, with English-speaking Left Hand’s help, tried to learn as much as he could about the federal government and American society. Little Raven visited Richardson (a Denver journalist) regularly and asked many questions about mining, the Great Father, and “civilization wonders.” Little Raven also worked to reassure the Americans at Fort Lyon, passing out bolts of calico to the women and conducting tours of his camp.²⁷

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In 1858 Left Hand and his family traveled to the white settlements along the Missouri River in Nebraska and Iowa. He wanted to study white American agriculture and customs. He concluded that it would be more advantageous for Arapahos to adopt cattle ranching as a means to make a living than to become farmers. As always, the Arapahos were adapting and planning, striving to control their own fate. Arapahos repeatedly lobbied for reserved land, implements, and consultants to adopt new material culture, but were ignored or promised aid that never materialized.²⁸

In April 1860, Left Hand took warriors from his Cherry Creek camp to raid for horses. While they were gone, drunken miners and “bummers” attacked his Arapaho village, raping women and stealing horses. Some squatters condemned this outrage, but the *Rocky Mountain News* used it as an argument for “the necessity of extinguishing the Indians’ title, and taking such measures as are called for the protection of both whites and Indians.”²⁹

Terrorized by the U.S. Army and overwhelmed by illegal immigrants, the Arapahos and Cheyennes petitioned Washington for a new treaty. They wanted land where they would not be molested. And they wanted the implements and technical advice required to take up farming or ranching. Despite submitting this request in 1858, it took until 1861 for a new treaty council to be convened.

1861 FORT WISE TREATY WITH THE ARAPAHO AND CHEYENNE

In 1859 Alfred B. Greenwood was appointed Commissioner of Indian Affairs. In 1837 he had worked as quartermaster for the removal of the Cherokees from the eastern United States. In September of 1860 the Congress sent him to Fort Wise (later renamed Fort Lyon) on the Arkansas River in what was not yet Colorado Territory to make a treaty to force the Arapahos and Cheyennes to give up their lands designated by the Fort Laramie Treaty of 1851. Greenwood arrived at Fort Wise on September 8, 1860, and hastily departed back to Washington on September 20. He only met with a few Arapaho and Cheyenne leaders, and they refused to sign the treaty he proposed. He left his assistant, medical doctor F.B. Culver, to complete negotiations. Southern Arapaho leaders Little Raven and Left Hand, who had attended the meeting with Greenwood, left and headed northwards with their bands. There had been no actual negotiation. Greenwood had insisted on confining the Arapahos and Cheyennes to a small triangle of land in the drylands between Big Sandy Creek and the New Mexican border, an area devoid of game and unsuitable for cultivation. He thought he was offering a treaty to all Cheyennes and Arapahos, but was only meeting with a few Southerners—Cheyennes Black Kettle and White Antelope; Arapahos Little Raven and Left Hand. None of the cultural elements essential to securing Indigenous trust, such as were part of the 1851 Horse Creek Treaty negotiations described above, were present.

Historian William Unrau concisely sums up the problematic aspects of Greenwood's brief visit:

Greenwood's official report to Washington was one of measurable success, but in fact his effort was barren of accomplishment. Only a few tribal leaders with questionable authority made verbal promises to exchange their princely domain for government annuities and sedentary life on a reservation between Sand Creek and the Arkansas River. The principal weakness of Greenwood's diplomacy was the obvious absence of the Northern Cheyennes and Arapahoes. Greenwood glossed over the issue by arguing that the Arkansas River tribes might convert their confederated Platte allies to the new life, yet it was no small task to disguise reluctance on the part of the northern tribes to abandon the gold country and their buffalo grounds on the headwaters of the Republican and Smoky Hill.³⁰

In Washington Greenwood reported that his proposals were agreeable to the two nations. He wrote up a treaty based on his misunderstanding of his discussions at Fort Wise. He sent A.G. Boone, the newly appointed Indian agent for the Arapahos and Cheyennes, to Fort Wise with orders to get his treaty document signed. Ignoring the protocols for a treaty conference, Boone and Culver hastily assembled a small number of hungry Arapaho and Cheyenne representatives at Fort Wise in February of 1861 in wintertime when other bands were unlikely to travel. "Boone did not negotiate. He simply presented Greenwood's treaty to the chiefs."³¹ The contents of the treaty included an introduction stating the treaty is between representatives of the United States and "the confederated tribes of Arapahoe and Cheyenne Indians of the Upper Arkansas River" There was no formal confederation of these tribes. They often allied and cooperated, but sometimes disagreed. They differed in their political and religious organization.

Article 1 gets directly to the U.S. government's main goal of forcing the Arapahos and Cheyennes to cede the territory allotted to them in 1851:

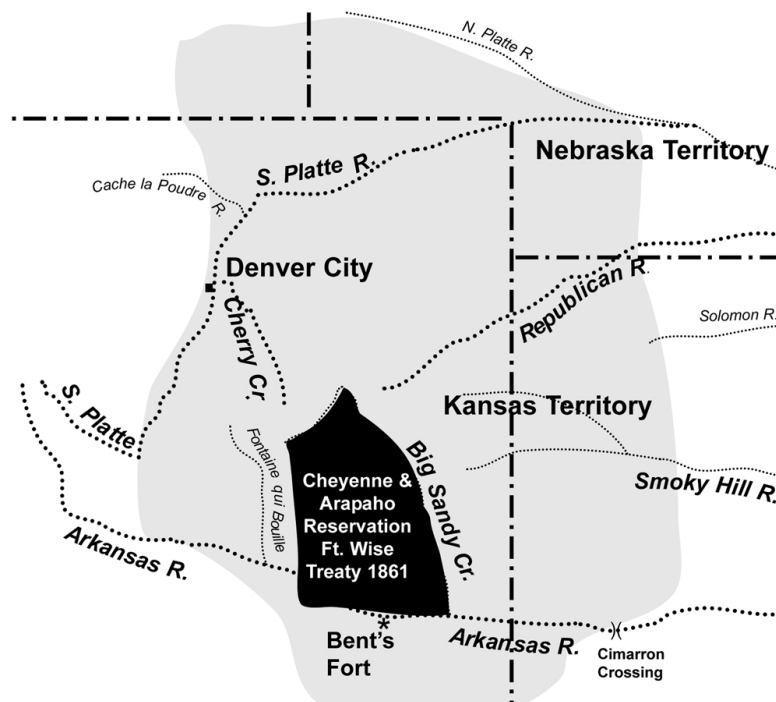
The said chiefs and delegates of said Arapahoe and Cheyenne tribes of Indians do hereby cede and relinquish to the United States all lands now owned, possessed, or claimed by them, wherever situated, except a tract to be reserved for the use of said tribes located within the following described boundaries, to wit: Beginning at the mouth of the Sandy Fork of the Arkansas River and extending westwardly along the said river to the mouth of Purgatory River; thence along up the west bank of the Purgatory River to the northern boundary of the Territory of New Mexico; thence west along said boundary to a point

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where a line drawn due south from a point on the Arkansas River, five miles east of the mouth of the Huerfano River, would intersect said northern boundary of New Mexico; thence due north from that point on said boundary of the Sandy Fork to the place of the beginning.³²

The following map displays the huge loss land called for in this cession. Note that at that time the New Mexican border ran just south of the Arkansas River.

INDIAN TERRITORY UNDER TREATIES OF FORT LARAMIE (1851) AND FORT WISE (1861)



Indian Territory under Treaties of Fort Laramie (1851) and Fort Wise (1861), image by Kevin Cahill, courtesy of History Colorado, *Colorado Encyclopedia*, n.d. (<https://coloradoencyclopedia.org/image/indian-territory-under-treaties-fort-laramie-1851-and-fort-wise-1861>). The gray shaded area indicates the land area reserved for the Cheyenne and Arapaho under the 1851 Treaty of Fort Laramie and managed by the Upper Arkansas Indian Agency. The black shaded area indicates the reduced land area reserved for the Cheyenne and Arapaho ten years later under the Treaty of Fort Wise, supervised by Samuel G. Colley.³³

Article 1 also divided what came to be called the Sand Creek Reservation between the two tribes, with the eastern portion going to the Arapaho.

Article 2 required 40-acre tracts to be awarded to each tribal member, along with other

areas to be held in common, used for schools, or held by the Indian agent. Such partitioning of land to individuals was a foreign concept to the Arapaho. Article 2 also stated:

The whole of the lands, assigned and unassigned, embraced within the exterior boundary herein designated, shall constitute and be known as the Reservation of the Arapahoes and Cheyennes of the Upper Arkansas; and all laws which have been or may be passed by the Congress of the United States regulating trade and intercourse with Indian tribes, shall have full force and effect over the same, and no White person, except as shall be in the employment of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the superintendent of the central superintendency, or of the agent of the tribes.³⁴

Article 3 gave the U.S. Secretary of Interior the sole power to divide and distribute the 40-acre tracts, a complete abrogation of the tribes' rights to self-determination.

Article 4 committed the United States to provide \$15,000 per year for 15 years to the Arapahos for the purpose of building homes and establishing agriculture on the reservation. The secretary of interior was empowered to decide how this money would be spent, and the U.S. President could discontinue the annuities entirely "should said Indians fail to make reasonable and satisfactory efforts to advance and improve their condition."³⁵

Article 5 provided \$5,000 per year for five years to set up a mill and mechanics shops.

Article 6 stated that "all (Arapahos and Cheyennes) that are now separated" had one year to join those at the reservation and receive the "benefits" of the treaty. *This article was an attempt to finesse the fact that the leaders of only a few bands participated in this winter meeting with Boone.*

However, Article 6, carefully interpreted, meant that Arapahos and Cheyennes who did not sign the treaty were not subject to it and would not even be permitted to join in its "benefits" after one year's time:

Article 6th: The Arapahoes and Cheyennes of the Upper Arkansas, parties to this agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for, respecting their improvement and civilization, and to that end, to induce all that are now separated, to rejoin and reunite with them. It is therefore agreed that as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages, and to induce them to come in and unite with their brethren; and to enable them to do so, and to sustain themselves for a reasonable time thereafter, such assistance shall be provided for them, at the expense of the tribe, as may be actually necessary for that purpose:

Provided, however, That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty; shall not be entitled to the benefit of any of its stipulations.³⁶

The Commissioner of Indian Affairs was supposed to get other Arapaho leaders to commit to the treaty and the tribe was supposed to pay for it.

Importantly, Greenwood, Boone, et al. put in writing that the “the confederated tribes of Arapahoe and Cheyenne Indians of the Upper Arkansas River” were distinct, i.e., not the same as Arapahos and Cheyennes to the north between the South and North Platte Rivers. As noted below, this led to U.S. Attorney Samuel Browne’s concluding that the white mines and towns north of the South Platte violated the Indian Intercourse Act and that these white residents should be moved out.

Article 11, later stricken out by the U.S. Senate, called for the Arapahos and Cheyennes to sell the land being illegally occupied at the Denver Town Site to the white trespassers. This was an attempt by Boone and Greenwood to legitimize the illegal settlements. It called for the tribes to receive some compensation—a minimum price of \$1.25 per acre—for the Denver land. This was an admission that the land occupied by settlers at Denver did not belong to the settlers. Historian William E. Unrau described the illegality and failure of Boone and Greenwood’s stratagem:

Denver City had been incorporated by the Kansas Territorial Legislature on February 27, 1860, yet all this was of questionable legality after Kansas became a state in 1861. The homestead bill as then proposed—but not passed—applied only to surveyed lands. Pre-emption was not extended to unsurveyed lands until after the Treaty of Fort Wise had been ratified, and by the act of June 30, 1834 [the Indian Intercourse Act], anyone who settled on lands “belonging secured or granted by treaty with the United States to any tribe, “or who attempted to survey such lands, could be fined and removed by military force. In short, the treaty-makers were faced with the task of obtaining assurances that the Indian land title in and around Denver City would be extinguished, and thus they found it necessary to write Article XI into the treaty. Ironically, this attempt to circumvent the public domain laws constituted further proof that the cession clauses of the Fort Wise agreement were of little value as a means of nullifying tribal claims to the upper South Platte basin. Failure of the Senate to be taken in by this stratagem forced the land question back into the hands of the Indian agents, who now were obliged to obtain additional signatures for the Fort Wise Treaty. If the agents failed, any subsequent argument that the negotiations of Boone and Culver were binding to all Indians of the Upper Arkansas would appear, in light of the strategy associated with Article XI, singularly awkward.³⁷

The chiefs in attendance “acted upon the strength of the verbal agreements of September, with full faith that the terms bound only those who signed. On February 18, 1861, the chiefs touched the pen with that understanding.”³⁸ The treaty was marked by Southern Arapahos Little Raven, Storm, Shave-Head, and Big Mouth (the names by which they were referred to in English). No Northern Arapahos were present. Important Southern Arapahos, especially Left Hand, were not present. Left Hand’s band was at winter camp near Denver City. Boone made no attempt to contact him, perhaps because he spoke fluent English and could have interpreted accurately for the Arapahos. Those who signed were adamant that they only represented their own bands.

Boone had a severe conflict of interest. “At the time he was building a ranch at the mouth of the Huerfano River, on a section of Indian land he had already usurped. The treaty would legitimize his claim and, at the same time, provide an opportunity of expanding his holdings onto ceded lands.”³⁹

Further doubt is cast on the integrity of the American treaty signatories by the fact that Boone wrote the Indian Commissioner “accusing Culver of neglecting his duties and stealing Indian goods.”⁴⁰

An unusual “P.S.” was added to the treaty:

P.S.—And it is further understood, before signing the above treaty, that it was the particular request and wish of the Chiefs and Councillors in general convention, in consideration of Robert Bent being one of their half-breed tribe, that he should have, as a gift from the nation, six hundred and forty acres of land, covering the valley and what is called the Sulphur Spring, lying on the north side of the Arkansas River and about five miles below the Pawnee Hills, and they wish the general government to recognize and confirm the same; and that Jack Smith, son of John S. Smith, who is also a half-breed of said nation, shall have six hundred and forty acres of land, lying seven miles above Bent’s Old Fort, on the north side of the Arkansas River, including the valley and point of rock, and respectfully recommend the general government to confirm and recognize the same.⁴¹

Robert Bent and John Smith were the “interpreters” for Boone’s hasty gathering. Though Bent’s mother was Arapaho, there is no evidence that he spoke Arapaho. Smith was married to a Cheyenne woman and spoke some Cheyenne, but no Arapaho. He was called “Lying John Smith” by members of both tribes. A few years earlier he had been banished from Denver for beating his wife with a stool. Thus, the Arapahos had no competent interpreter at the **Fort Wise** proceedings. Yet the two interpreters schemed to gain huge ranches for their personal use. The lack of honest interpreters and Boone’s desperation to get a signed document led to

conflicting understandings of what took place. Some Arapahos and Cheyennes believed they had been negotiating for land on the buffalo range to the northeast on the Republican and Solomon Rivers. Some believed they were gaining Boone's commitment to distribute annuities. It was common during treaty conferences to induce land cessions and signature signing by offering provisions. Most certainly the Arapahos were suffering severe hunger.

As summed up by anthropologist Loretta Fowler,

(Boone) did not call a treaty council where all the bands were represented, did not have reliable interpreters, and made no transcript of the talks to validate what had been said. He was unable to get the northern Arapaho and Cheyenne leaders to attend, but, according to Boone, Commissioner William Dole had told him to go ahead anyway and made a treaty "over their heads."⁴²

On February 28, 1861, just 10 days after the "signing" of the Fort Wise treaty, the U.S. Congress passed an act making Colorado an official U.S. Territory. This helps explain the haste of Dole and Boone to make the treaty. But the fact that most Arapahos and Cheyennes had not agreed to cede the eastern plains put the territory on dubious legal ground. The squatting miners, railroad builders, town dwellers, farmers, and ranchers pressed hard for legal status. Lincoln's Republican Party, in control of the Presidency and Congress, wanted federal control over the territory to stamp out secessionist sentiments and to eventually admit Colorado as a "free" state. The United States Civil War would begin in less than two months.

The white effort to push out the Arapahos intensified. White attacks on Arapahos, such as the beating of an Arapaho boy by a white rancher, increased. The "non-treaty" Indians, especially Cheyennes, intensified their attacks on wagon trains and squatters.

Corrupt efforts to steal Arapaho land and provisions continued. William Gilpin, the newly appointed territorial governor and superintendent of Indian affairs for Colorado Territory, appointed Boone as Agent for the "Kiowa, Comanche, Cheyenne, and Arapaho Indians of the Arkansas, Smoky Hill, and Republican Agency." Boone used this post as leverage to enlarge his ranching operations and survey town plats on the Huerfano River, while attempting to gain more tribal leaders' signatures on the Fort Wise document.

Meanwhile Commissioner of Indian Affairs William Dole appointed his cousin, Samuel G. Colley, as Indian agent for Colorado Territory. Thus, two agents, one appointed by Gilpin and the other by Dole, competed for control of the Arkansas agency. Historian William Unrau wrote in 1964:

As with Boone, incentives other than Indian welfare had attracted Colley to the Upper Arkansas. In 1859 his son had come to seek his fortune in Colorado. With the appointment of the elder Colley to the Upper Arkansas Agency under conditions suggesting nepotism—Colley addressed Dole as "Dear Cousin

William” on official Upper Arkansas correspondence—the way was made less difficult for the younger Colley to establish a thriving livestock and buffalo robe enterprise near the army post, where his father eventually would control government issues designated for tribes of the region. Trade contracts with the Indians were more easily negotiated with the assistance of Blackfoot “Lying John” Smith, agency interpreter, partner in the younger Colley’s operation. ... The elder Colley, while arguing under oath that he was “in no other business” was accused by Bent and others of selling government supplies to the Indians ... (I)t is difficult to believe that he was in no way involved with his son’s operations or with the store at Fort Lyon where his wife sold Indian goods to military personnel.⁴³

Striking out Article 11, either because it was considered blatantly illegal, because it was an admission that Denver was illegally occupied, or because some senators objected to paying Indians for land, the U.S. Senate approved the treaty on August 6, 1861, and U.S. President Lincoln signed it on December 5. However, because the Senate amended the treaty, it would have to be presented again to the tribes for signatures.

1861-1864

The United States Civil War began in April of 1861. The massive warfare to the east restricted the resources going to Colorado Territory. Communications between Colorado and Washington were also restricted. However, due its gold and silver, the territory continued to be important to the U.S. military and the wartime administration.

Hoping that the Arapahos and Cheyennes would be confined to the Sand Creek Reservation, as it came to be called, survey parties tramped over the plains prospecting for railroad routes and town or mining sites. As documented above, these surveys of unceded land were illegal. Arapahos and Cheyennes, along with the traditional traders with historic relationships with the tribes, insisted that the Fort Wise treaty did not apply to those whose leaders had not signed it. Little Raven and Left Hand both repudiated the treaty.

Importantly S.E. Browne, the United States Attorney appointed to the new Colorado Territory, demanded that Commissioner Dole clarify the boundaries of the territory. Based on his lawyerly reading of the 1851 and 1861 treaties, and of the act establishing Colorado Territory, Browne saw no legality for white settlement north and west of the South Platte. After December 6, 1862—one year after Lincoln signed the Fort Wise Treaty—Browne would apply federal law to that area, which was still designated as Indian Territory. This meant settlers should be forcibly removed. Browne persuaded Commissioner Dole to issue a letter stating this to recently appointed Colorado governor (and therefore ex officio superintendent for

Indian affairs) John Evans, and to publish this letter in local newspapers. This meant that legally several squatter's towns, including the new territorial capital, Golden City, and most of the mines were off limits to American citizens. While Browne's interpretation somewhat benefited the Arapahos and Cheyennes, the "non-treaty" bands did not agree with the implication that they had ceded the land south of the South Platte.

Boone and Colley were soon faced with the boundary dilemma. As Indian agents, they were obligated to enforce those clauses of the Trade and Intercourse Acts that required expulsion of settlers who invaded Indian lands, and while they for a time could placate territorial officials and settlers by continuing to pursue negotiations with the disaffected tribes, such action, from a legal point of view, was impossible after December 6, 1862. According to the troublesome sixth article, additional Cheyennes and Arapahoes were not entitled to "benefits" of the Fort Wise Treaty after that date [i.e., not covered by the treaty]. Alternatives remaining were a new treaty (unlikely), the expulsion of the settlers and miners (even more unlikely), or defiance of federal law and recognition of the whole affair as a *fait accompli*.⁴⁴

Ultimately the latter option—defiance of federal law—was the choice made by Evans and the United States government. Evans and the white settlers protested Dole's affirmation of Browne's ruling and placed immense political pressure on Dole to retract it, which he soon did in a "wordy, ambiguous"⁴⁵ letter, completely reversing himself and stating that "the Treaty of 1861 cedes by its express terms all lands not owned, possessed or claimed by the Cheyennes and Arapahoes, wherever situated."⁴⁶ Ultimately Dole gave complete authority to Evans to deal with the boundary issues.

At first, Evans attempted the first option, a new (or modified) treaty. He sent older trappers and traders, who had relationships with the tribes, to persuade the "non-treaty" Indians to sign the Fort Wise document. These emissaries had no success, as at this point the tribes did not trust the U.S. government and realized that the Fort Wise reservation was mostly dry, barren, and 250 miles from the nearest bison herd. Evans's conflicts of interest—territorial governor for the squatting ranchers and miners, Indian superintendent supposed to serve tribal interests, and businessman hoping to build railroads—led him to contradictory actions. At one point, he gained Dole's permission to negotiate a reserve for the Northern Arapahos residing in the Cache la Poudre area, but though leaders Little Owl, Medicine Man, and Friday were willing to discuss this, nothing came of it. In September 1863 Evans attempted to hold a meeting with plains tribes on the Arikaree Fork of the Republican River, but only four lodges of Cheyennes and no Arapahos showed up.

The next two years saw escalating vigilante attacks on Indians by settlers, destructive organized sweeps of the plains by the U.S. Army, and raids by Sioux, Cheyennes and Arapahos

attempting to protect their hunting grounds, procure provisions, and retaliate for depredations by whites. Arapahos were reduced to begging for food from the migrants. Little Raven stated his band's willingness to settle on the Sand Creek Reservation, using it as a base for hunting, as soon as the promised developments—housing, a mill, tools—were supplied. Perhaps due to the Civil War, none of these materialized. Colley continued to steal the Arapahos' annuities, then sell them back to them. Little Raven and Left Hand reported this to Evans, with no results. Colley deliberately excluded Left Hand from a delegation to visit President Lincoln, causing Little Raven to refuse to go. Presumably, Colley wanted to prevent them from reporting Colley's thievery.

The illegal settlers raised false claims about Indian thefts of livestock and imminent plans for warfare on the whites by Cheyennes, Arapahos, and Sioux. The First Regiment of Colorado Volunteers, formed in 1861, and the Second Colorado Cavalry Regiment, formed in 1863, were poorly disciplined, unprofessional troops led by Colonel John Chivington, appointed by Evans. Chivington's primary occupation had been as a Methodist minister. He was not a professional soldier. He strongly believed that in the interests of "civilization" Indians must be removed from the Colorado plains.

In the summer of 1864 Arapaho leaders Left Hand and his brother Neva, both of whom spoke English, made these points to U.S. Army Surgeon John J. Saville:

First Left Hand said that he did not know the terms of the Fort Wise treaty and insisted that it was not valid without his consent. Second, Neva expressed his contempt for John Smith, Colley's interpreter, reminding Saville that he had personally told Governor Evans that Smith was unacceptable to the Arapahoes. Third, Left Hand was still angry because Colley had not waited for him in March as he had promised. He believed that he had not been taken to Washington because "he could speak English with 'The Great Father' and tell him how his agents and John Smith had cheated them." Fourth, he accused the whites of breaking their word. He had agreed to stop raiding against the Utes in exchange for protection from them, but when a Ute war party struck the Arapahoes within sight of Fort Lyon, the commander made no attempt to stop the fight and expressed no knowledge of an agreement. Finally, Left Hand swore that Colonel Chivington had burned a small Arapaho camp on the Platte.⁴⁷

After lack of success in binding Arapahos (and Cheyennes) to treaties, Evans reverted to a policy of forcing out or eradicating the tribes from Colorado. In Summer 1864 he issued two proclamations:

EXPULSION OF THE ARAPAHOS FROM COLORADO

The first proclamation:

COLORADO SUPERINTENDENCY INDIAN AFFAIRS,
Denver, June 27, 1864.

TO THE FRIENDLY INDIANS OF THE PLAINS:

Agents, interpreters, and traders will inform the friendly Indians of the plains that some members of their tribes have gone to war with the White people. They steal stock and run it off, hoping to escape detection and punishment. In some instances they have attacked and killed soldiers and murdered peaceable citizens. For this the Great Father is angry, and will certainly hunt them out and punish them, but he does not want to injure those who remain friendly to the Whites. He desires to protect and take care of them. For this purpose I direct that all friendly Indians keep away from those who are at war, and go to places of safety. Friendly Arapahoes and Cheyennes belonging on the Arkansas River will go to Major Colley, U. S. Indian agent at Fort Lyon, who will give them provisions, and show them a place of safety. Friendly Kiowas and Comanches will go to Fort Larned, where they will be cared for in the same way. Friendly Sioux will go to their agent at Fort Laramie for directions. Friendly Arapahoes and Cheyennes of the Upper Platte will go to Camp Collins on the Cache la Poudre, where they will be assigned a place of safety and provisions will be given them.

The object of this is to prevent friendly Indians from being killed through mistake. None but those who intend to be friendly with the Whites must come to these places. The families of those who have gone to war with the Whites must be kept away from among the friendly Indians. The war on hostile Indians will be continued until they are all effectually subdued.

JOHN EVANS,
Governor of Colorado and Superintendent of Indian Affairs.

The second proclamation:

BY ORDER OF HON. JOHN EVANS
GOVERNOR, TERRITORY OF COLORADO
AUGUST 11, 1864

PROCLAMATION.

Having sent special messengers to the Indians of the plains, directing the friendly to rendezvous at Fort Lyon, Fort Larned, Fort Laramie, and Camp Collins for safety and protection, warning them that all hostile Indians would be pursued and destroyed, and the last of said messengers having now returned, and the evidence being conclusive that most of the Indian tribes of the plains are at war and hostile to the Whites, and having to the utmost of my ability endeavored to induce all of the Indians of the plains to come to said places of rendezvous, promising them subsistence and protection, which, with a few exceptions, they have refused to do:

Now, therefore, I, John Evans, governor of Colorado Territory, do issue this my proclamation, authorizing all citizens of Colorado, either individually or in such parties as they may organize, to go in pursuit of all hostile Indians on the plains, scrupulously avoiding those who have responded to my said call to rendezvous at the points indicated; also, to kill and destroy, as enemies of the country, wherever they may be found, all such hostile Indians. And further, as the only reward I am authorized to offer for such services, I hereby empower such citizens, or parties of citizens, to take captive, and hold to their own private use and benefit, all the property of said hostile Indians that they may capture, and to receive for all stolen property recovered from said Indians such reward as may be deemed proper and just therefor.

I further offer to all such parties as will organize under the militia law of the Territory for the purpose to furnish them arms and ammunition, and to present their accounts for pay as regular soldiers for themselves, their horses, their subsistence, and transportation, to Congress, under the assurance of the department commander that they will be paid.

The conflict is upon us, and all good citizens are called upon to do their duty for the defence of their homes and families.

In testimony whereof, I have hereunto set my hand and caused the great seal of the Territory of Colorado to be affixed this
11th day of August, A. D. 1864.

JOHN EVANS.

EXPULSION OF THE ARAPAHOS FROM COLORADO

Evans's first proclamation did not benefit the Arapahos. The U.S. military had ordered fort commanders to not permit Indians to approach. A "shoot first, ask questions later" policy was in effect. Major Wyncoop at Fort Wise (renamed Fort Lyon in 1862 because Wise was governor of Virginia, which seceded from the Union) disobeyed orders and allowed Arapahos and Cheyennes to come to the fort to receive rations. But, for the most part, "friendly Indians"—i.e., bands overwhelmed by the sheer numbers and armaments of the invaders—could not go to the forts even if they desired to. By 1862 there were 30,000 whites, 1,600 Southern Arapahos, 1,600 Cheyennes, and 1,800 each of Kiowas and Comanches in the Colorado Territory.⁴⁸

Evans's second proclamation was a license to both of Chivington's regiments—made up of "miners, farmers, and storekeepers, along with a share of adventurers and desperadoes"⁴⁹—and vigilante settlers to murder Indians and steal their property.

Evans's attitude had hardened after being stood up by tribes at Arikaree Fork in September 1863. The Arapahos and Cheyennes no longer trusted Evans.

Evans continued the strategy of extorting signatures for annuity provisions. He commanded a Major Loree to have Northern Arapaho chiefs sign a document stating that they agreed with Fort Wise before receiving food. Seeking Northern Arapaho signatures was problematic, given that the Fort Wise Treaty stated that it was with "Arapahoe and Cheyenne Indians of the Upper Arkansas River."

From 1863 onwards, Evans's letters to Washington grew increasingly hysterical. He claimed isolated seizures of livestock or provisions by individuals or small groups to be coordinated warfare by an alliance of Sioux, Arapahos, and Cheyennes. Evans wanted to believe there was a conspiracy. He and Chivington wanted to use this as a reason to exterminate the plains tribes.

In late September of 1863 Left Hand and Little Raven came to Fort Lyon with their bands. Starving and desperate, the Arapahos requested to settle down on the Sand Creek reservation and receive annuities. But Colley said the reservation was still not prepared. He distributed annuities and sent them away to hunt. Yet within a few months he leased part of the reservation to whites.⁵⁰

Colley wrote Dole, "There is not a buffalo within 200 miles and little game of any kind. Wild game is fast disappearing from the plains." Whites killed thousands of buffalo for their "hides and tallow to the Indians' injury. Most of the deprivations [*sic*] committed by them are from starvation."⁵¹

Hunger, disease, and cheating by white traders steadily reduced the Southern Arapaho population. This paragraph from Coel's *Chief Left Hand* describes their situation in late 1863:

Moving down the Arkansas from Lyon, Ketchem [a medical doctor sent to vaccinate the plains tribes] came upon isolated bands of Southern Arapahos, "so

poor and sick,” he wrote Evans, “they are unable to hunt.” Ketchem was horrified to learn that these starving people were subsisting on the festering carcasses of cattle that had died from disease while crossing the plains with wagon trains. Everywhere he went between Forts Lyon and Larned, the special agent found knots of Indians hungry and sick with “erysipelas, whooping cough and diarrhea.” Their ponies were also dying from cold, hunger, and thirst, he reported.⁵²

Ketchem also reported white traders cheating: “(Indians) do not realize one-fourth value of their robes in trade for flour, sugar, coffee, dry goods and trinkets.”⁵³

The destitution and ecological destruction caused by the invaders fragmented Arapaho society. It grew more difficult to gather in large groups. There simply was not enough grass to maintain large herds of horses. Hunters had to travel great distances to find bison, causing weakness and early death for their horses. Bands had to divide and spread out to survive. This caused ceremonial life and cultural cohesion to suffer.

Conflict continued on the lands east of Denver. If Indians, mainly Cheyennes, found stray cattle or took cattle, Chivington indiscriminately destroyed Cheyenne camps. For example, in April 1864 Chivington sent out a detachment commanded by Lieutenant George Eayre to recover allegedly stolen cattle. It did not matter to the soldiers who had the cattle. They drove Cheyennes away from two small camps, stole robes and food, then torched the camps. Cheyenne warriors fought back, raiding ranches and farms. This cycle of violence escalated in the spring and summer of 1864. Trying to protect themselves from the continuing immigration, warriors closed the Overland Trail in August 1864.

Little Raven and Left Hand, with most of the Southern Arapahos, avoided the conflict by remaining to the south by the Arkansas River. In August 1864 both Little Raven’s and Left Hand’s bands, the majority of the Southern Arapaho, were camped in southern Kansas. However, young warriors from both bands joined the battles to the north. Guerilla warfare prevailed across the plains.

Somewhat earlier Left Hand had taken his band to Fort Lyon as directed by Evans’s proclamation to “friendly Indians.” But despite the fact that Evans had sent \$3,000 to feed the “friendlies,” Colley said he had nothing for them and sent them away to find game.

On August 23, 1864, Chivington declared martial law in Denver. Evans had received permission from Washington to form a Third Colorado Regiment. Chivington hurried to fill it with any able-bodied males he could persuade, including many unemployed, frustrated prospectors. They were enlisted for 100 days, provided minimal training at Camp Weld in Denver, and sent to patrol the South Platte.

Congress had hurriedly passed an Enabling Act allowing Colorado, Nebraska, and Nevada to vote to become U.S. states. The U.S. government desired to add states to the Union, with the likelihood that these states would be controlled by members of Lincoln’s Republican Party.

EXPULSION OF THE ARAPAHOS FROM COLORADO

A Colorado election was hastily scheduled for the second Tuesday of September 1864. Chivington hoped to be sent to the House of Representatives and Evans planned to become a Senator. Both focused more on campaigning than on ensuring the discipline of troops (Chivington) or on attending to Indian welfare (Evans, as Indian superintendent).

Realizing they could not win militarily in the long run, Cheyennes and Arapahos managed to get a letter proposing a peace conference to Major Wynkoop at Fort Lyon, in hopes that he could gain them a meeting with the reluctant Evans. At some risk, Wynkoop allowed himself to be escorted to the Smoky Hill camps (east of Denver in present-day Kansas) to meet on September 10, 1864, with Arapaho leaders Little Raven, Left Hand, Neva, Big Mouth and Cheyenne leaders Black Kettle, White Antelope, Bull Bear, Sitting Bear, and Big or White Wolf. They agreed that Wynkoop would escort them to Evans if they would turn over some captured white prisoners. Wynkoop was disobeying orders when he negotiated this arrangement.

The Smoky Hill meeting temporarily stopped the guerilla fighting. Wynkoop, some freed prisoners, and seven tribal leaders—three Cheyenne and four Arapaho—went to Fort Lyon, from where Wynkoop sent word to Evans that the party would come to Denver. Little Raven did not accompany Wynkoop and kept his band away, as he had now concluded that whites could not be trusted.

Evans was not happy with this development, as a peace negotiation would interfere with his plans to wipe Indians from the plains. Evans and Chivington were leaders of a war faction in Denver, though there was a faction that believed negotiation and accommodation were a better course. It is possible that the contracts to supply the new Third Regiment benefited both Evans and Chivington. Certainly, the profits benefited others among Denver's squatter businesses.

Evans was forced to meet with the Arapaho and Cheyenne leaders on September 28, 1864, at Camp Weld, but he abdicated his duty as Indian superintendent and refused to make any agreement with them. He told them they must deal only with the military at the forts. He said that war had commenced, and he was in no position to make peace. Later he denied saying this, but the minutes of the meeting recorded that he did. Mostly he interrogated the chiefs, attempting to glean intelligence about the location of the "hostiles" that he believed were conspiring against him. Wynkoop later reported this about Evans:

He further said, that the regiment was ordered to be raised upon his representation to Washington that they were necessary for the protection of the Territory, and to fight hostile Indians; and now, if he made peace with the Indians, it would be supposed at Washington that he had misrepresented matters in regard to the Indian difficulties in Colorado and had put the government to a useless expense.⁵⁴

In other words, Evans put his reputation and political career ahead of his responsibilities as Indian Superintendent, and ahead of the lives of his citizen soldiers and the Indians. He was determined to use the Third Regiment to “chastise” the tribes. Two weeks before, on September 13, his faction had been soundly defeated in the statehood vote. This probably intensified his vitriol toward the tribes.

At Camp Weld, Chivington stated that the Indians who surrendered to Wynkoop would not be considered hostile. This turned out to be a lie, but the seven chiefs left with the impression that they would be protected if they turned themselves in to Major Wynkoop at Fort Lyon. Wynkoop thought there was agreement that those who came to Fort Lyon would be safe there until a more detailed armistice could be worked out under the supervision of his superior, General Curtis, headquartered at Fort Larned in Kansas. But Curtis (though he was unaware of Wynkoop’s gambit) had recently written to Evans that “I want no peace until the Indians suffer more.”

Chivington’s and Evans’s plan differed. Two weeks after Camp Weld, Evans wrote to Dole:

This winter, when the Indians are unable to subsist except in the buffalo range, is the most favorable time for their chastisement, and it is hoped that a presentation of the urgent necessity of the case to the War Department will secure the immediate organization against them as to bring them to terms.⁵⁵

Evans wrote to Colley at Fort Lyon:

Chiefs have been here and I have declined to make any treaty with them, lest it might embarrass the military operations against the hostile Indians of the plains. Arapahoes and Cheyennes being now at war with the United States government must make peace with the military authorities. This arrangement relieves the Indian bureau of their care until peace is declared. ... You will be particular to impress upon these chiefs the fact that my talk with them was for the purpose of ascertaining their views, and not to offer them anything whatever. They must deal with the military authorities until peace, in which case alone will they be in proper position to treat with the government in relations to the future.⁵⁶

Evans maneuvered to achieve a military solution and used any reports by Colley or Wynkoop of Indians coming to Fort Lyon as intelligence about their location to provide to Chivington.

On October 17, 1864, Wynkoop was dismissed from his post at Fort Lyon for disobeying orders and assisting the chiefs to seek peace. Major Scott Anthony replaced him. Anthony

immediately forced Little Raven and Left Hand to give up their bands' arms—3 rifles, 1 pistol, 60 bows with quivers. He considered the Arapahos and Cheyennes who turned themselves in to be prisoners of war. Following orders from Evans and General Curtis, Anthony had cut off rations. But when he took the bands' arms so they could not hunt, he had to supply rations again. Then he decided to return their weapons, cut off rations, and told them to go hunt buffalo. Little Raven, totally fed up with Anthony's arbitrary behavior, moved his people 65 miles down the Arkansas to get away from the whites. Left Hand, quite ill, and desirous to hear back from General Curtis about the supposed peace process begun at Camp Weld, remained in the area.

Meanwhile regular army troops, commanded by General Blunt, were roaming the plains, searching for "hostiles" and striking fear and distrust into the tribes. And Chivington's militias terrorized the starving, scattered bands with random attacks. For example, in October a unit of the Third Regiment, recruited from the Boulder area and commanded by Captain David Nichols, attacked two Cheyenne lodges, killing six men, three women, and one fifteen-year-old boy. Chivington congratulated Nichols and told him to "kill all the Indians you come across."⁵⁷

Major General Halleck in Washington was determined to keep the Overland Trail open. He commanded Brigadier General Patrick Connor in Salt Lake City to guard the Overland "without regard to department lines." This order took away Chivington's authority. Halleck had little confidence in Chivington and his volunteer troops who were enlisted for only 100 days. Enraged, Chivington sent more of the Third south to the Arkansas.

Evans, however, welcomed Connor, writing him: "I am glad that you are coming. I have no doubt the Indians may be chastised during the winter, which they very much need. Bring all the forces you can; then pursue, kill and destroy them."⁵⁸ Soon after, Evans absented himself from Colorado, claiming to be attending to his duties as Colorado Superintendent of Indian Affairs in Washington.

All these factors—escalated regular army patrols, terrorist attacks by Chivington's militias, Evans's and Chivington's frustrations with their political losses, the increasing destitution of the Arapahos—led to great loss of life in the summer and fall of 1864. The atrocious massacre at Sand Creek was a vicious episode in a continuing campaign of genocide against the Arapahos and Cheyennes. Twenty-five years of warfare on the plains ensued, though most battles were outside of Colorado.

The following text, written by contemporary Arapahos and Cheyennes, succinctly sums up the period from 1851-1865:

INVASION

Prospectors discovered gold in a creek near Denver in 1858. The next spring, many thousands of miners came here searching for gold. They knew that the treaties we signed with the US government meant they weren't supposed to

be on our lands. But the prospectors ignored the treaties and came here anyway.

They killed the bison herds that were our economy, and they burned the wood we needed for building, heating, and cooking. Their animals ate all of the grass our horses needed to live. They brought diseases like smallpox and cholera that killed perhaps half of our people. The invasion left many of us starving and desperate.

Even though Cheyenne and Arapaho people kept trying again and again to establish peaceful relationships with the invaders, their dehumanizing attitudes toward our people led to the dangerous feeling that all Cheyenne and Arapaho were enemies. It led to the idea that we didn't deserve to live in Colorado anymore. The newcomers said it was their Manifest Destiny to replace us. Their governor made it legal for them to kill Indigenous people in our own homelands.⁵⁹

Left Hand (Niwot) had been killed by Chivington's mob in 1864, along with many of his band. Little Raven, along with Yellow Bear, Storm, and Big Mouth, managed to keep the majority of Southern Arapahos away from the fighting. For several years they roamed around southern Kansas and the Oklahoma Panhandle area. Some Southern Arapaho warriors and more Northern Arapahos fought in the Plains Wars against the United States.

In 1865 U.S. President Andrew Johnson demanded and received Evans's resignation. But by then, the "*fait accompli*" had occurred. The U.S. government pretended that the Colorado plains was land to be mined, homesteaded, and urbanized. Evidence of this was the May 24, 1864 congressional act "for the relief of the citizens of Denver" which "legalized" the lots platted on Cherry Creek in 1858. By 1872 the U.S. courts were routinely basing rulings in land disputes on this act:

The City of Denver, which is in the County of Arapahoe, Colorado Territory, was originally laid out by a company or association of persons on the public domain of the United States before the same had been surveyed and became subject to entry. And the company was aided by the privileges of preemption, at the minimum price, being secured to settlers and occupants of lots by the general enactment of May 23, 1864 "for the relief of the citizens of the towns upon the lands of the United States under certain circumstances," and by a special enactment "for the relief of the citizens of Denver" of the 28th of May, 1864, whereby the probate judge of the county was constituted a trustee to enter the land selected for the site of the town when the same became subject to entry, and to pass the legal title to the settlers and occupants of lots, under rules and regulations prescribed by the legislative authority of the Territory of Colorado.⁶⁰

EXPULSION OF THE ARAPAHOS FROM COLORADO

Evans went on to profit greatly from railroad construction and real estate development in Colorado. Taking advantage of the Union Pacific Act, companies he controlled acquired ten square miles on each side of the tracks for each mile of rails:

Among the railroads he spearheaded were the Denver Pacific Railroad Company, which linked Denver with the Union Pacific that was routed through Cheyenne, Wyoming; the Kansas Pacific, which tied Denver to Kansas City; the Denver, South Park, and Pacific; the Denver and New Orleans; and the Boulder Valley Railroad. Evans also built the Denver Electric and Cable Railway, later the Denver Tramway.⁶¹

As the railroads were built the land around them increased in value. By his death in 1897 Evans had extracted immense wealth from the Indigenous people's lands.

President Abraham Lincoln broke many of the promises his country made to Cheyenne and Arapaho people when he signed the Homestead Act and the Pacific Railway Act. These two acts unilaterally took away Cheyenne and Arapaho homelands without full agreement from either of our Tribes.⁶²

The Homestead Act of 1862 allowed U.S. citizens over 21 years of age to establish residency on 160 acres of "public domain" land, make improvements on this land for five years, then file to claim it as their own for only a small filing fee. Many failed prospectors were already squatting on the plains before 1862. The Homestead Act served to legitimate their squatting. The machinations to get the tribes to cede their land and bring it into the U.S. public domain were given new impetus by the act.

Nearly all of the private land in Colorado was unlawfully taken from indigenous peoples, especially the Ute, Arapaho, and Cheyenne. Once the land was in the US public domain, citizens could acquire a parcel through one of several acts, including the Homestead Act, intended to stimulate immigration to the West by individual farmers and ranchers.⁶³

ARAPAHO AND CHEYENNE DESCENDANTS SUM UP THE 1851-1864 PERIOD:

We gave up much in the first Treaty of Fort Laramie in 1851. By signing it, Cheyenne, Arapaho, and other Tribal leaders agreed to stay in a reduced territory and guaranteed safe passage for Americans heading west on the Oregon Trail. In return, the US would keep invaders from making permanent homes on

our lands. But the government lied. They had no intention of following the treaties, even though they were supposed to be the supreme laws of the land.

Less than ten years later, the Colorado gold rush brought towns like Denver to the land the US government promised would belong to us forever. At negotiations over the 1861 Treaty of Fort Wise, the US government threatened us with starvation unless our leaders agreed to stay on a tiny piece of barren land in Southeastern Colorado. How could anyone think we could survive there?

The US government had clearly betrayed us again. They said we had to leave our hunting economy behind. But we were not farmers, and the prairie is a hard place to grow anything. By 1864, many of our people were starving and desperate, all because the US government refused to honor the promises it made in treaties with Cheyenne and Arapaho people.⁶⁴

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Northern Arapaho Tribe

Truth, Restoration, and Education Commission (TREC) Recommendations

1. It is recommended that the State of Colorado compensate the Northern Arapaho Tribe for pain and suffering (and/or mental distress) resulting from illegal trespass.¹
2. It is recommended that the State of Colorado compensate the Northern Arapaho for all mineral wealth extracted through illegal mining prior to any legal land cession.²
3. It is recommended that the State of Colorado and the Department of Interior compensate the Northern Arapaho for the water rights that they inherently owned as part of their Treaties in Colorado. The area involved is the watershed from the continental divide, from the headwaters of the North Platte River to the confluence with the South Platte River and back to the continental divide in the Rocky Mountains.³
4. It is recommended that the State of Colorado, because of its culpability, fully compensate the Northern Arapaho for its role in their forced removal. This is directly related to Governor Evans's proclamations.⁴
5. It is recommended that the State of Colorado fully compensate the Northern Arapaho for its role in the deaths caused at the Sand Creek Massacre and support federal legislation to compensate the Arapaho descendants of the Sand Creek Massacre.⁵
6. It is recommended that the State of Colorado restore rights to the Northern Arapaho for unrestricted cultural and traditional land use within the aboriginal territory, on

all public lands in Colorado (federal and state), and must restore, hunting and fishing rights, collecting medicinal plants or any other historical cultural use of the land.⁶

7. It is recommended that the State of Colorado provide compensation to the Northern Arapaho for the land illegally taken by the railroads. In addition, when a railway is abandoned, the railroads must return the land to the Northern Arapaho.⁷

8. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Arapaho Tribe and other Tribes that may be located within the external boundaries of the State of Colorado access to funding that is available to other Colorado counties, municipalities, and non-profits. The State of Colorado should support all efforts for the Northern Arapaho to protect sacred sites in Colorado.⁸

9. It is recommended that the State of Colorado no longer assess property taxes on federally recognized enrolled Northern Arapaho members.⁹

10. It is recommended that the State of Colorado support the Northern Arapaho Nation in its efforts to have the Indian Claims Commission settlement opened for appeal.¹⁰

11. It is recommended that the State of Colorado authorize all higher education institutions funded by state funds to provide all enrolled members of the Northern Arapaho Nation tuition waivers, and room and board.¹¹

12. The State of Colorado should introduce legislation to provide a fee of .01% to all future real estate transactions to create a permanent fund to compensate the Northern Arapaho for their losses while simultaneously helping improve their economic standing.¹²

ENDNOTES

1 Beginning in 1834 with the Indian Trade and Non-Intercourse Act, invaders were prohibited from settling on American Indian Land in the west. The Northern Arapaho land is all located within the boundaries of the Act, and the intruders, invaders, squatters, and such moved into areas owned by the Tribes. The devastation diminished the welfare of the Arapaho people. This violation was not corrected by any agency even when they knew the occupation was illegal.

2 The Front Range and up by the continental divide were all legally titled to the Arapaho, yet in one year, 100,000 trespassers invaded the land and mined the available gold. The Arapaho were never compensated for the gold taken from 1858 to the present on the land that they never signed a treaty and ceded.

3 As we know, water rights are inherent within Treaty rights and need not be stated. The State of Colorado has never compensated the Northern Arapaho for their water rights within the State of Colorado.

4 The forced removal was an act of genocide. Territorial Governor Evans failed in his duties as the Superintendent of Indian Affairs, and the state should be held liable for his actions.

5 The State of Colorado, through its Territorial Governor Evans and the Colorado militia, has significant culpability for the murders and destruction, and they need to lead the way to compensate for any losses associated with the loss of life and other damages.

6 The State of Colorado and the Federal government must provide free access to any locations that the Arapaho people used for ceremonial purposes, for collection of plants for medicinal purposes, and for hunting buffalo that are longer available to the Arapaho people.

7 The State of Colorado's economy flourished when the railroads were the given land via the Railroad Act. At no time did the Arapaho people benefit from these land transfers.

8 The current legislation does not allow Tribal Nations to access GOCO resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes. According to the U.S. Forest Service, over 200 sacred sites are not currently protected.

9 The Northern Arapaho people who live off the reservation have a reserved right not to pay state property taxes as they are still living within their homelands. The status granted by the United States Citizenship Act in 1924 protects Arapaho members with a protectorate clause.

10 In the reviews of the Indian Claims Commissions dockets 329 D, there are significant issues with the process. The calculations to determine values were biased. The issues of the unratified Treaty of 1851 and the illegal taking of the land in the Fort Wise Treaty of 1861 are all questionable. The final award to the Northern Arapaho Agreement contained unscrupulous and dishonorable dealings on the part of the United States government.

11 The State of Colorado has a duty and moral responsibility to help the Arapaho People recover from the losses associated with the sordid history and treatment of American Indians in the past. All schools in the state benefit from land that belonged to American Indians. The

School Fund received 4 million acres of land in Colorado to support schools, and the Arapaho students have yet to benefit from this resource. Every Arapaho child should receive an exceptional educational experience with tutors and financial assistance to enhance achievement. It is also noted that Colorado State University received substantial Arapaho land to help start the institution and still holds 19,000 acres of land and a healthy endowment. The Arapaho nation and their students have not seen any significant opportunities to increase their acceptance and success at CSU.

12 This effort would do the least harm to current Colorado residents while compensating for past wrongs and creating restorative justice.

*Southern Cheyenne and
Southern Arapahos*

The Southern Cheyenne and Southern Arapaho Post-1864

THE SOUTHERN CHEYENNE AND SOUTHERN ARAPAHO POST-1864

The atrocious massacre at Sand Creek at the end of 1864 was a stage in a years-long campaign by the U.S. government, the Kansas-Colorado territorial governments, and the invading white settlers to eradicate Cheyennes, Arapahos, and other tribal nations from the plains east of the Rocky Mountains. Cheyennes and Arapahos would continue to hunt in the region and contest for their lands. But the years of attacks on their economy and culture had fragmented and weakened both tribes. Subsequently the U.S. forces—both military and civilian—relentlessly forced the Southern Cheyenne and Southern Arapaho into ever smaller areas, far to the south of the lands guaranteed them by the Horse Creek Treaty of 1851. Both tribes used every means at their disposal to hang on to their land, especially the rich bison range in the Smoky Hill region, and to their way of life.

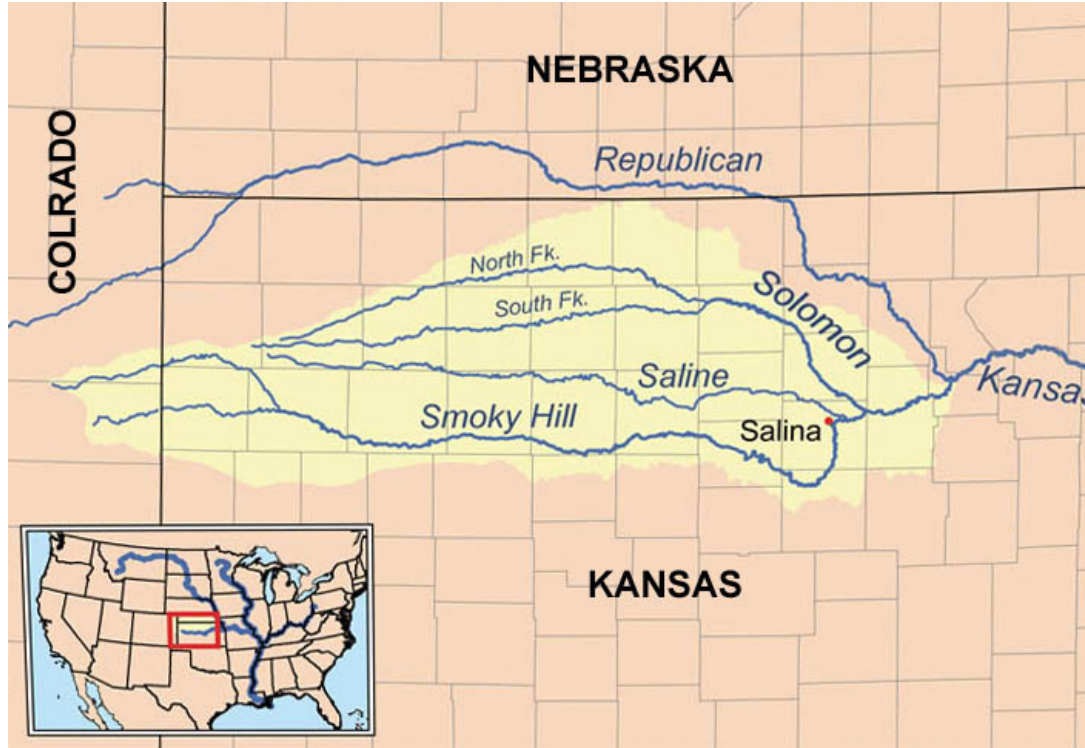
At Sand Creek, U.S. troops assassinated nine members of the Cheyenne Council of 44: White Antelope, Lone Bear, Yellow Wolf, Big Man, Bear Man, War Bonnet, Spotted Crow, Bear Robe, and Little Robe. In addition, Chivington's uncontrolled militia killed Cheyenne warrior society leaders Standing in the Water, Lone Bear (One Eye), War Bonnet, Two Thighs, and Yellow Shield. Council of 44-member Lean Bear was killed earlier in 1864 by soldiers of the 1st Colorado Regiment as he approached them to talk. However, the regiment was operating under orders to “kill Cheyennes whenever and wherever found.”¹ This decimation of leadership and elder knowledge had long-term negative effects on Southern Cheyenne society.

Southern Arapaho leader Left Hand (Niwot) died of wounds inflicted by Chivington's marauders at Sand Creek. His abilities as a multilingual diplomat and critical associate of Little Raven in strategizing to meet the challenges of the U.S. settler and military invasions were lost. Little Raven and the Arapaho bands that camped with him were not at Sand Creek.

He was to the south, traveling southward at the time to stay away from U.S. soldiers.

The economic losses to both tribes caused by repeated destruction of Arapaho and Cheyenne villages by U.S. troops were huge. The three Cheyenne villages burned by Colorado territorial troops in April 1864 and the Cheyenne-Arapaho property looted or destroyed at Sand Creek represented hundreds of hours of labor over many years. The procurement and tanning of hides to make lodges, the preservation of food for the winter months, the hunting and manufacture of bison robes to trade for implements took years of coordinated effort. The white soldiers destroyed these essentials in a matter of hours, leaving the bands less self-sufficient and ever more dependent on trade or handouts from the U.S. forts. This dependency forced the Southerners, both Arapaho and Cheyenne, to kill increasing numbers of bison for hides to trade, rather than for their own use.

Council of 44 member Black Kettle survived Sand Creek, though many of his Wutapiu band were slain. Black Kettle's wife, Medicine Woman Later, was severely wounded. As the principal Cheyenne advocate for a just peace with the U.S. government and its colonizers, Black Kettle's reputation suffered after the massacre. The Sand Creek survivors initially fled to join their relatives in the Smoky Hill-Republican River region to the northeast. In early 1865 this area remained relatively free of invasive white settlement and still had adequate bison herds.



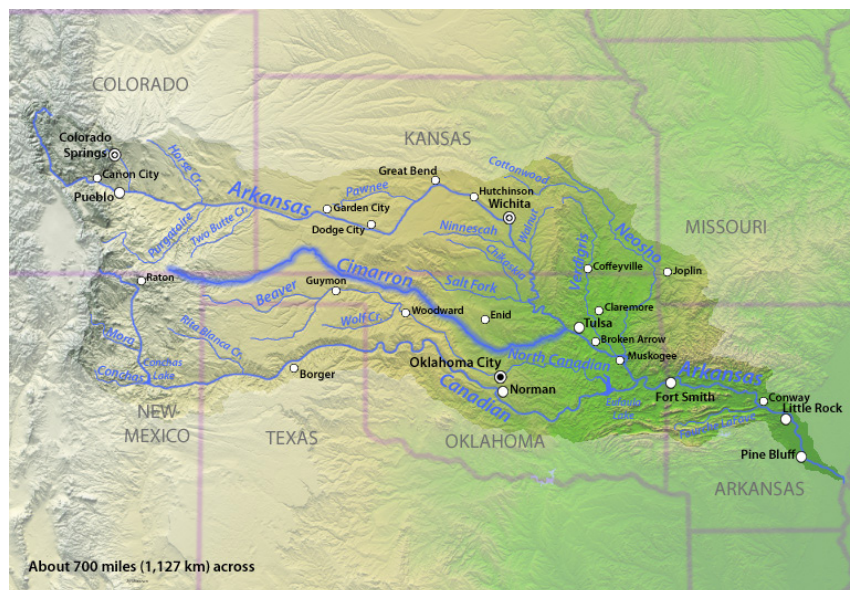
Map of the Smoky Hill River Watershed. (Kmusser in Wikipedia, from USGS data at https://en.wikipedia.org/wiki/United_States_Geological_Survey, n.d.)

THE SOUTHERN CHEYENNE AND SOUTHERN ARAPAHO POST-1864

The Southern Cheyenne Dog Soldier military society had established itself in the Smoky Hill region. Their settlement there was part of a gradual change to the Cheyenne band system. The organization of Dog Soldier society was less matrilineal and more focused on raiding than that of the traditional bands. The U.S. military campaigns on the Colorado plains accelerated this fragmentation of the traditional social structure. “For, in addition to all the other sorrows that came at Sand Creek, the slaughter there was now bringing about the final destruction of the old band system.”²² The Dog Soldiers and the many Northern Arapahos and Lakotas camped at Smoky Hill sheltered the survivors and helped them heal.

In December 1864 the Lakotas, Cheyennes, and Arapahos coordinated to make war on the invaders. In January 1865 they conducted major raids along the South Platte, destroying the stage stop town of Julesburg and many squatters’ ranches. They took over the Platte Road near Julesburg, took down the telegraph lines, and cut off freight, causing scarcity, severe inflation, and panic in Denver. Most Southern Cheyenne were present at Smoky Hill at this time; the Arapahos present were mainly northerners, Sage People.

After the Julesburg battles, the tribes moved north to the Powder River region for the winter, using the time to regroup and strategize. The exception was Black Kettle’s band. He and Council chiefs Seven Bulls and Black White Man moved south to meet up with Little Raven’s Southern Arapahos in February 1865. Aiming to avoid U.S. soldiers, and still hoping to achieve a fair peace agreement, this group moved south of the Arkansas River to the Cimarron River, welcomed and aided by Kiowa, Comanche, and Prairie Apache already residing there.



Map of the Arkansas River Basin. (Shannon1 in Wikipedia, from NASA SRTM North America imagery at <https://www2.jpl.nasa.gov/srtm/northAmerica.htm>, n.d.)

Thus, in early 1865, a few months before the U.S. Civil War ended, most Southern Arapa-

hos were near the Cimarron, while Southern Cheyennes were split between the Cimarron and the Powder River regions.

As the Civil War wound down, the U.S. government turned its attention to consolidating its empire across the entire continent. Constructing transcontinental railroads with numerous feeder lines was key to this consolidation. In 1862 Congress passed the Pacific Railway Act. The act stated that “The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made.”³ The Union Pacific line was to stretch from Omaha, Nebraska, westwards along the Platte River. Feeder lines would extend southward toward Oklahoma and New Mexico territories. Essentially this meant that federal policy was to remove Native peoples from this region. U.S. Secretary of Interior Jacob P. Usher stated that chartering the Union Pacific Railway would require “the removal of Indians who inhabit the valleys of the Platte and Republican Rivers.”⁴ The act of building railways would drive away bison and bring more invading settlers to the Platte-Republican-Smoky Hill region. Governmental policy was to force tribes from the region entirely.

Migration of whites into the Kansas-Colorado region intensified after 1864. More roads were built across the plains, and thousands of whites continued to immigrate to the Colorado region in hopes of remuneration from mining, farming, ranching, and mercantile activities. The 1862 Homestead Act was illegally used to colonize land in Colorado. According to J.C. Horn in the *Colorado Encyclopedia*:

Land acquisitions through Homesteading had a tremendous impact on Colorado’s agricultural development, as well as on the nation’s relationships with native peoples across the American West. Nearly all of the private land in Colorado was unlawfully taken from Indigenous peoples, especially the Ute, Arapaho, and Cheyenne. Once the land was in the US public domain, citizens could acquire a parcel through one of several acts, including the Homestead Act, intended to stimulate immigration to the West by individual farmers and ranchers.⁵

The Homestead Act (and the similar Preemption Act of 1841) clearly did not apply to unceded Indian land. Despite claims to the contrary by John Evans, governor of the Colorado Territory and his successors, land north of the South Platte River had never been ceded. Yet after Arapahos and Cheyennes were dispersed by years of military and vigilante operations, this fact was ignored.

The Railway Act and Usher’s demands to clear the plains of Indians precipitated a U.S. military campaign against the Cheyenne, Arapaho, and other tribal nations. With the end of the Civil War, U.S. military officers were motivated to engage in warfare against tribes, as this would be their only means of achieving recognition and promotion. Officers who had achieved

brevet (temporary field) promotion to ranks such as colonel and general during the Civil War reverted to their actual ranks such as captain or major. They saw warfare against Indians as a means of advancement. In August 1865 General Granville M. Dodge sent columns from Fort Laramie and Omaha with orders to kill every male Indian over 12 years old. But on August 24, 1865, Dodge was ordered to muster out most of his troops for reasons of post-Civil War budget tightening. Despite these contradictory mandates from Washington, U.S. governmental response to tribes' resistance to conquest was consistently to employ multiple means to force their relocation.

The Indian agent for the Upper Arkansas, Jesse Leavenworth, believed in and advocated for a reasonable peace agreement with the tribes. But Secretary of War Stanton "informed Major General Pope (commander of Military Division of the Missouri) that Leavenworth had no authority to make any treaty with the Indians. ... About May 6 (1865) Colonel (James) Ford received orders 'to proceed with all his forces in active hostilities against the Indians, and to pay no attention to any peace movements or propositions.'"⁶

In defense, the Cheyenne, Arapaho, and Lakota used the Republican River/Smoky Hill region as a base to stop the invasion. Through the 1860s and early 1870s the tribes warred against the invading whites and the U.S. government. How to resist such a powerful enemy was a difficult decision. Within both tribes there were advocates for military resistance and for diplomacy or accommodation to survive.

The War Department sent troops into the field. Yet on May 27, 1865, U.S. President Andrew Johnson authorized U.S. Senator James R. Doolittle and his commission "to make peace, if you can, with hostile Indians,"⁷ with any treaty subject to presidential approval. Doolittle and Leavenworth believed that the five central and southern plains tribes (Cheyenne, Arapaho, Kiowa, Prairie Apache, and Comanche) would accept a reservation south of the Arkansas and east of Fort Bascom in eastern New Mexico. This uncoordinated behavior by the U.S. government—all-out military action while making peace overtures—was prevalent during this period, as was indecision and foot-dragging. Doolittle's commission studied the "Indian problem" and made a report two years later. Meanwhile the Southern Cheyenne and Arapaho were subjected to continual military attacks and bad-faith negotiations.

The bands led by Black Kettle and Little Raven hoped that by moving southward they could avoid the U.S. military, retain self-determination, and eventually reach an accord with the invaders. In August 1865 leaders of this group—Big Mouth, Little Raven, Storm, and Spotted Wolf of the Arapahos; and Black Kettle, Little Robe, Black White Man, and Seven Bulls, all members of the Cheyenne Council of 44—signed a truce after negotiating with Leavenworth.

We, the undersigned, chiefs and headmen of the bands of Arapahoe and Cheyenne Indians, now south of the Arkansas river, having been forced, in self-protection, to fight the United States troops under the command of Colonel J.M. Chivington, at Sand creek, Colorado Territory, and having, through

the interposition of a kind Providence, escaped our intended massacre, and having heard from our friend Colonel J.H. Leavenworth, through his runners and agents, that we could in safety visit him at the mouth of the Little Arkansas River, have come to him to ask that he will use his influence to restore kindness between our bands, and if possible between our whole tribes and the government of the United States.⁸

Keep in mind that most Southern Cheyenne were still in the north, at Powder River or Smoky Hill, at this time.

As they signed the truce, these Southern leaders committed to meeting in council with U.S. representatives in October of 1865 at the mouth of the Little Arkansas River.

At the October 1865 council, the U.S. treaty commission included Major General John B. Sanborn as president, Major General W.S. Harney, Agent Leavenworth, Kit Carson, Judge James Steele representing the Bureau of Indian Affairs, Indian Superintendent Thomas Murphy, and William Bent. Little Raven, Storm, Spotted Wolf, and Big Mouth were the Arapahos present. Black Kettle and, probably, Seven Bulls, Little Robe, Black White Man, Eagle Head, and Bull That Hears were the Southern Cheyenne. The Council began with a sort of acknowledgment and apology for Sand Creek and an odd offer of reparations in the form of specified acreages of land for survivors. Over two days, the commissioners pressured the tribes to accept reservation land south of the Arkansas. Little Raven and Black Kettle, et al., argued that not enough of their people were present to make a treaty. They argued also that the lands proposed for their reservation were already occupied by Kiowas and Comanches. Most strongly they argued that their true homelands were near the Arkansas and between the Arkansas and the Platte.

On October 14, the commissioners presented the tribes with a treaty stating that the new reservation would not be occupied until clear title to the land was secured and that the tribes could continue hunting, while avoiding whites, in the unoccupied portions of their original Arkansas-Platte country. “Mixed bloods” were promised land of specified acreage on the Fort Wise reservation, which had never been developed. Cheyenne Council Chiefs Black Kettle, Seven Bulls, Little Robe, and Black White Man, along with leaders Eagle Head and Bull That Hears, signed. Arapahos Little Raven, Storm, Big Mouth, and Spotted Wolf, as well as headmen Black Man, Chief in Everything, and Haversack signed. The treaty’s promise of continued access to lands north of the Arkansas, combined with presents and promises of supplies, made it sensible to sign the treaty. These leaders believed they were signing for their bands only, though a statement was inserted requiring the signers to exercise their “utmost endeavor”⁹ to get other bands to accept the treaty. Three days after the signing an amendment was added declaring the Cheyenne, Arapaho, and Kiowa-Apaches to be “confederated tribes” under the treaty. The tribes certainly did not agree to this.¹⁰

Sanborn and Leavenworth told Black Kettle and Little Raven that the agreement would only apply to their bands and that others could sign within five months if they wished. This was a lie.

Four Chiefs from among the Forty-four Chiefs who sat in the sacred circle. Only eight lodges followed them, eight lodges out of more than two hundred eighty lodges of the Southern People alone. Yet, with the willingness of these four Chiefs to sign the new treaty, the Southerners lost all the rich lands between the Arkansas and the Platte Rivers, the country that had been their home ever since Yellow Wolf led his Hair Rope People south of the Platte, nearly forty-five summers ago.¹¹

This Treaty of Little Arkansas River established a prevailing pattern. The goal of the U.S. government was to remove tribes from the central plains and force them southward. United States representatives would listen performatively to tribes' demands, then badger or bribe a few leaders to agree to pre-written language that met the government's goals. Chiefs who signed treaties specified that they only signed for their bands, but the U.S. government considered them to apply to entire tribal nations. This process bought the United States time to gain ever greater leverage over the tribes as the eradication of bison herds proceeded, U.S. military action restricted tribes' range of movement, and white settlers poured into the plains. Throughout the 1860s and 1870s Arapaho and Cheyenne leaders argued earnestly for their Smoky Hill-Republican River land and for continuing their established way of life, but the colonists' numbers and tactics prevailed.

Though the Little Arkansas Treaty lasted only two years and was never implemented, it set one important precedent: The U.S. government acknowledged in writing the atrocities of Sand Creek.

In the fall of 1865, most of the Southern Cheyenne bands that had stayed in the Black Hills, Powder River, and Smoky Hill areas moved south of the Arkansas to join Black Kettle. The Dog Soldier grouping remained at Smoky Hill. Throughout that year these Cheyenne had continued to make war on the invaders. On their journey southward, when Cheyennes arrived from Powder River to Smoky Hill, they discovered that a new stage line, with fortified supply stations, had been established through their land.

William Bent had insisted that no war with the Arkansas Indians was necessary. To Senator Doolittle's committee Bent had testified: "If the matter were left to me I would guarantee with my life that in three months I would have all the Indians along the Arkansas at peace, without the expense of war." Bent also recommended a new reservation between the Smoky Hill and Republican Rivers for the Cheyennes and Arapahoes; this proposal was rendered impractical by the

establishment of the Butterfield Overland Despatch route. Any reservation for the Indians of the Upper Arkansas Agency would now have to be located south of the Arkansas River and away from the buffalo lands between the Platte and Arkansas rivers.¹²

The Little Arkansas Treaty (LAT) only lasted two years and was never implemented. It was just a step in a policy of concentration, of pushing plains tribes southward onto reservations in the Indian Territory already set aside for the tribes forced to relocate from east of the Mississippi in the 1830s. The promised reparations for Sand Creek were never paid to the individuals named in the treaty.

In late 1865 Major Edward Wynkoop was assigned to the Interior Department “to bring about a union of the Cheyenne and Arapahoe Indians who have been north of the Platte River during the past season, with that portion of said tribes on the Upper Arkansas river with whom treaties have been recently negotiated.”¹³ In mid-February 1866 Wynkoop attempted to persuade Medicine Arrows and Big Head, two leaders of the Southern Cheyenne bands that had recently come south, to sign the Little Arkansas Treaty. Big Head argued strongly against the treaty, pointing out that it allowed whites to travel through the tribes’ Smoky Hill hunting grounds, which would drive away the bison. Further, his people did not want to live south of the Arkansas with other tribes. Their lands were north of the Arkansas. Wynkoop badgered and threatened these leaders until they signed, bribing them with supplies and threatening them with military attacks.

With the assistance of Cheyenne Council member Little Robe, Wynkoop spoke with Dog Soldier leaders in April 1866 and persuaded the remaining military society leaders to sign the Little Arkansas Treaty. Wynkoop wrote that the Dog Soldiers were “endorsing the actions of their chiefs at the mouth of the Little Arkansas and of the council held by myself on Bluff Creek. They it is true, yield the Smoky Hill Country with great reluctance; it is their favorite hunting ground and the bones of their fathers repose there.”¹⁴

Whatever Wynkoop thought the Cheyennes said, they had no intention of giving up the Smoky Hill Country. “The Cheyenne determination to retain the Smoky Hill country at any cost, Indian Agent Jesse Leavenworth complained from his agency, was not reflected in Wynkoop’s newspaper report and statements.”¹⁵

Meanwhile the U.S. Senate was delaying ratification of the LAT, and Black Kettle, under pressure from warriors, repudiated the cession of the Smoky Hill country. The Senate added amendments to the LAT. Under pressure from Kansas occupiers, the Senate mandated that the Cheyenne and Arapaho reservation would not include any territory within the boundaries of Kansas. This would exile the tribes even farther from their homeland.

In November 1866 Black Kettle and Little Robe signed the amended treaty. But the Dog Soldiers and many other Southern Cheyennes did not recognize it. As the treaty established no actual reservation, Arapahos and Cheyennes continued to move across the southern and

central plains, hunting and maintaining their culture as best they could.

Despite the treaty ratification, United States military leaders, in particular Generals William Tecumseh (W.T.) Sherman and Winfield Scott Hancock, were determined to punish the Cheyenne for summer 1866 attacks on the Smoky Hill Road. In March 1867 the War Department moved 1,400 troops commanded by Hancock to Fort Larned, Kansas. The U.S. Seventh Cavalry, commanded by Lieutenant Colonel George Armstrong Custer, played a major role in Hancock's campaign. Hancock's rules of engagement forbade him from attacking Indigenous residents unless they committed "depredations" against him or settlers. But he hoped for conflict: "Our troops must get among them, and must kill enough of them to inspire fear, and then must conduct the remainder to places where Indian agents can and will reside among them, and be held responsible for their conduct."¹⁶ The goal was to terrorize the tribes. Hancock believed the Cheyenne were the most hostile and powerful tribe, and he wished to make an example of them.

Hancock announced to Tall Bull, an important Dog Soldier leader, and other Cheyennes that he planned to march his troops to their camps, evidently to intimidate the population. Tall Bull explained to Wynkoop that his people, with recent memories of Sand Creek, would be terrorized by this behavior. Hancock was incensed when people fled from their villages, abandoning their lodges and other property, rather than accepting his "visits." Throughout the spring of 1867 Hancock's troops chased Cheyennes around the region. Hancock burned a large Cheyenne and Sioux village on April 19, 1867. Cheyennes retaliated by attacking white settlements. Hancock responded by burning more Cheyenne villages, causing significant economic losses to the people.

The Southern Cheyenne, the Dog Soldiers especially, were responding to Hancock's depredations. But the larger issue for them was the building of the Kansas Pacific Railroad through the Smoky Hill Valley. They wanted to prevent this and continued attacking travelers on the Smoky Hill Road. The United States government, utilizing its War Department, was determined to kill or relocate tribal residents and build the rail line. In a letter to General Ulysses S. Grant, Sherman bluntly stated: "if fifty (50) Indians are allowed to remain between the Arkansas and Platte we will have to guard every state station, every train and all Railroad working parties. ... Rather get them out as soon as possible and it makes little difference whether they be coaxed out by Indian Commissioners or killed."¹⁷

Hancock and Sherman hoped to continue their military campaign, but the U.S. Congress formed the Indian Peace Commission on July 20, 1867, to "establish peace with certain hostile Indian tribes." The War Department commanded Sherman to patrol the roads and garrison forts, but to stop attacking the Cheyenne, Kiowa, Sioux, and Arapaho. Sherman was disappointed by the act of Congress, believing that talks with the old "peace chiefs" would not include the fighting warrior factions: "To talk with the old ones is the same old senseless twaddle."¹⁸

The purpose of the Indian Peace Commission was not to restore tribal homelands or fairly compensate Native people for their losses. Instead, the commissioners “were to separate the hostile from the friendly Indians and, if possible, to place the Indians upon permanent reservations removed from western roads and railroads.”¹⁹ Of course, the territory of roads and railroads was constantly expanding. On the Southern Plains the commission offered to negotiate with the Cheyennes, Arapahos, Kiowas, Comanches, and Kiowa-Apaches in the fall of 1867. The council was held in Kansas (from where the amended LAT excluded Indian settlement) sixty miles south of Fort Larned on Medicine Lodge Creek. The tribes refused to meet at any U.S. military fort because they could not trust the Army. The congressional act creating the commission included a provision stating that if the commissioners could not achieve peace, they should raise 4,000 volunteers to force the “hostile Indians” onto reservations.

Throughout the summer young Cheyenne warriors had been harassing white travelers and settlers to prevent occupation of their land. Black Kettle, and even some older Dog Soldier leaders (e.g., Roman Nose) hoped to reach an accord. The majority of Southern Arapahos, led by Little Raven, Storm, Little Big Mouth et al., had avoided conflict. The Arapahos were destitute, poorly nourished and in tattered clothing after being homeless in barren hunting territory for so long.

At Medicine Lodge Creek the U.S. commissioners signed three treaties: with Kiowas and Comanches, with the Plains Apache who agreed to confederate with the Kiowas and Comanches, and with the Cheyennes and Arapahos. Below are listed the main provisions for the Southern Cheyenne and Arapaho, whom the commissioners insisted were “confederated”:

- The Little Arkansas reservation was erased and no land in Kansas was included in the new reservation, which was in western Indian Territory, just south of the Kansas border.
- The signing tribal leaders agreed:
 - 1st. That they will withdraw all opposition to the construction of the railroad now being built on the Smoky Hill River, whether it be built to Colorado or New Mexico.
 - 2d. That they will permit the peaceable construction of any railroad not passing over their reservation, as herein defined.
 - 3d. That they will not attack any persons at home or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States or to persons friendly therewith.
 - 6th. They withdraw all pretense of opposition to the construction of the railroad now being built along the Platte River, and westward to the Pacific Ocean; and they will not in future object to the construction of railroads,

wagon-roads, mail-stations, or other works of utility or necessity, which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

- 7th. They agree to withdraw all opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.
- The treaty, never adhered to in its original measures, called for a permanent Indian agent on the new reservation, as well as a blacksmith, physician, farmer, engineer and other personnel, schools and other buildings to be constructed, agricultural implements to be provided, and annuities to be delivered for 30 years.
- To “civilize” the tribes, children aged 6-16 would be required to attend school.
- The tribes would “reserve the right to hunt on any lands south of the Arkansas so long as the buffalo may range thereon in such numbers as to justify the chase; and no white settlements shall be permitted on any part of the lands contained in the old reservation as defined by the treaty made between the United States and the Cheyenne, Arapahoe, and Apache tribes of Indians, at the mouth of the Little Arkansas, under date of October fourteenth, eighteen hundred and sixty-five, within three years from this date.”

On October 28, 1867, fourteen Southern Cheyenne chiefs and eight Southern Arapaho chiefs signed the Medicine Lodge Creek Treaty (MLT). The Cheyenne signers included four leaders of the soldier societies: Bull Bear, Tall Bull, White Horse, and Whirlwind. But not all Southern Cheyenne bands were present; those led by Roman Nose and Medicine Arrows stayed away. After the signing, the U.S. commissioners distributed valuable gifts—including ammunition, cloth and clothing, and food—to the several thousand tribal members present. These desperately needed provisions likely motivated the harassed tribes, trying to survive as the bison decreased, to agree to the treaty.

In the year after the MLT signing, neither tribe was motivated to settle on the new reservation or to change their treasured way of life. They had not understood the location of this relatively unusable land and had no desire to inhabit it. Hunting over wide territories, conflicts with rival tribes such as the Kaws, and maintaining a difficult detente with the U.S. government demanded great resourcefulness. Inevitably conflicts arose as the government sent surveying

parties to the region, and as white bison hunters slaughtered the herds as a means of forcing Indigenous people onto reservations: “In 1873, the Secretary of the Interior noted that ‘[t]he civilization of the Indian is impossible while buffalo remain on the plains’; following this logic, the Army provided free ammunition to hide hunters, who brought bison to the brink of extinction. By 1894, Yellowstone National Park hosted the only known wild herd in the United States.”²⁰

The Medicine Lodge Treaties achieved the government’s main objective of moving the Plains Indian nations out of the way of the transcontinental railroad. However, they did not bring peace to the plains, for two main reasons: government agents and Indian leaders interpreted the treaties differently, and not all Plains Indians were represented at the Medicine Lodge council.²¹

The U.S. government’s policy of moving Indians “out of the way” and concentrating them in Indian territory, already populated by other Indigenous nations forced to relocate in earlier years, proceeded apace.

During 1868, no attempt was made to establish the reservation called for in the MLT. The Indian agents for the Upper Arkansas remained at Fort Larned in Kansas, distributing supplies from there. Importantly, the Cheyenne Dog Soldier bands had been forced to the south and continued to conduct raids along the Santa Fe Trail to gain supplies and resist the U.S. settler invasion. Young men from Black Kettle’s and Little Raven’s bands frequently joined the raiders, despite the chiefs’ efforts to prevent this. Throughout the summer and fall of 1868 skirmishes of invaders with Cheyenne and some Arapaho warriors were frequent. In September 1868 Cheyenne warriors destroyed a small wagon train and battled a larger one for four days. At the same time, Southern Arapaho leaders Little Raven, Powder Face, and Spotted Wolf visited U.S. General Sheridan at Fort Dodge, Kansas, to tell him they wanted no part of the war. Separately, Black Kettle (Southern Cheyenne) continued to communicate the same message.

Sheridan sent troops led by Brigadier General Alfred Sully to the Cimmaron River to punish the Cheyenne for the raids on the Santa Fe Trail. With great discipline and superior tactics, the Cheyenne Dog Soldiers repulsed Sully.

General W.T. Sherman, in overall command of the U.S. Army Division of the Missouri, gained approval from the Acting Commissioner of Indian Affairs to establish an agency at Fort Cobb on the Washita River in western Indian Territory as a gathering place for “non-hostile” Cheyenne and Arapaho. He authorized General Sheridan, commander of the Department of the Missouri, to mount a winter campaign against the “hostile” tribal members. Numerous Kiowas, Comanches, Caddos, Wichitas, and others also assembled at Fort Cobb, responding to a promise of rations and protection. As usual, the U.S. government used hunger as a weapon

against tribal peoples. Writing in 1880, former Commissioner of Indian Affairs George W. Manypenny suggested that Sheridan and Hazen diverted money from the Medicine Lodge Treaty supplies to the winter campaign.²²

However, in contradiction to Sherman's instructions, "non-hostile" Cheyenne and Arapaho were not permitted to gather at Fort Cobb:

On November 20, 1868, Black Kettle and Little Robe, accompanied by Big Mouth and Spotted Wolf of the Arapahoes, appeared voluntarily at Fort Cobb. Black Kettle, speaking only for his camp of 180 lodges, wanted peace. He professed to have no control over any other Cheyenne group. ... Hazen (the Brevet Major General in charge at Fort Cobb) spoke frankly to the Cheyenne and Arapaho delegation. He declined to offer to make peace and warned the chief not to come to Fort Cobb or join the camps of the friendly Kiowas and Comanches.²³

Hazen's behavior was disturbingly reminiscent of Evans's in Denver before the Sand Creek Massacre. Because Sheridan's troops were in the field, Hazen refused offers of peace.

Black Kettle's attempt to gain protection for his band came to naught. In a surprise attack, U.S. regiments commanded by Colonel George Armstrong Custer killed Black Kettle and destroyed his village on the Washita River on November 27, 1868. Custer killed 9-20 Cheyenne warriors and 18-40 women and children. Cheyenne warriors, along with the Arapahos, Kiowas, Comanches, and Kiowa-Apaches camped nearby rushed to assist Black Kettle and killed 22 U.S. troops and several white captives.

Custer's murder of Black Kettle and destruction of the Cheyenne village received criticism in the Eastern U.S. press and from U.S. officials who advocated a "softer" Indian policy. The massacre at Washita was inevitably compared to Sand Creek. Sherman responded by stating that Chivington had attacked people who were under the protection of the commander at Fort Lyon, while the commander of Fort Cobb had made it clear he was not protecting the Cheyenne and Arapaho. This convoluted reasoning epitomized the back-and-forth caviling among U.S. officials, as they pursued their common goal of forcing tribes into captivity in Indian Territory.

For the remainder of 1868 Sheridan's troops stayed in the field, forcing Cheyenne and Arapaho bands to continually relocate their camps, weakening their horses and rendering hunting nearly impossible. Sheridan sent messengers urging bands of the two tribes to come to Fort Cobb (after earlier refusing to allow them there). Cheyenne Little Robe and Arapaho Yellow Bear communicated that they wanted peace, but others feared or refused to travel to Fort Cobb. On December 31, 1868, Little Robe, Yellow Bear, and nineteen other leaders, their people starving, surrendered to Sheridan at Fort Cobb.

Sheridan moved his headquarters to Fort Sill (Camp Wichita) in January 1869. He sent Custer into the field to harass the remaining Cheyenne and Arapaho bands to come there. Little Raven's band of Arapahos arrived at Fort Sill on February 11, 1869. Big Mouth, with 80 Arapaho lodges, declined to surrender and joined Cheyenne bands on the Staked Plains in the borderlands of the Texas Panhandle and New Mexico. Sheridan sent Custer after these bands. During this campaign Custer took Cheyenne chiefs Big Head, Dull Knife (Lean Face), and Fat Bear hostage, using the threat of hanging them to force the release of two white women captives of the Cheyenne. Later the three chiefs were sent to Fort Hayes, Kansas, where Big Head and Dull Knife were killed while attempting to escape. More leaders were lost.

Both Southern tribes were in disarray and disagreement at this time, though most Southern Arapahos had come to Fort Sill by April 1869. Sixty-seven Cheyenne lodges, led by Little Robe, Minimic, Red Moon, Grey Eyes, et al. arrived at Fort Sill on April 7, 1869. But on April 19, Red Moon fled with thirty lodges. They and other Cheyennes who fled on April 25 hoped to join Sand Hill, the Cheyenne chief who was holding out in the Antelope Hills, near the Texas Panhandle.

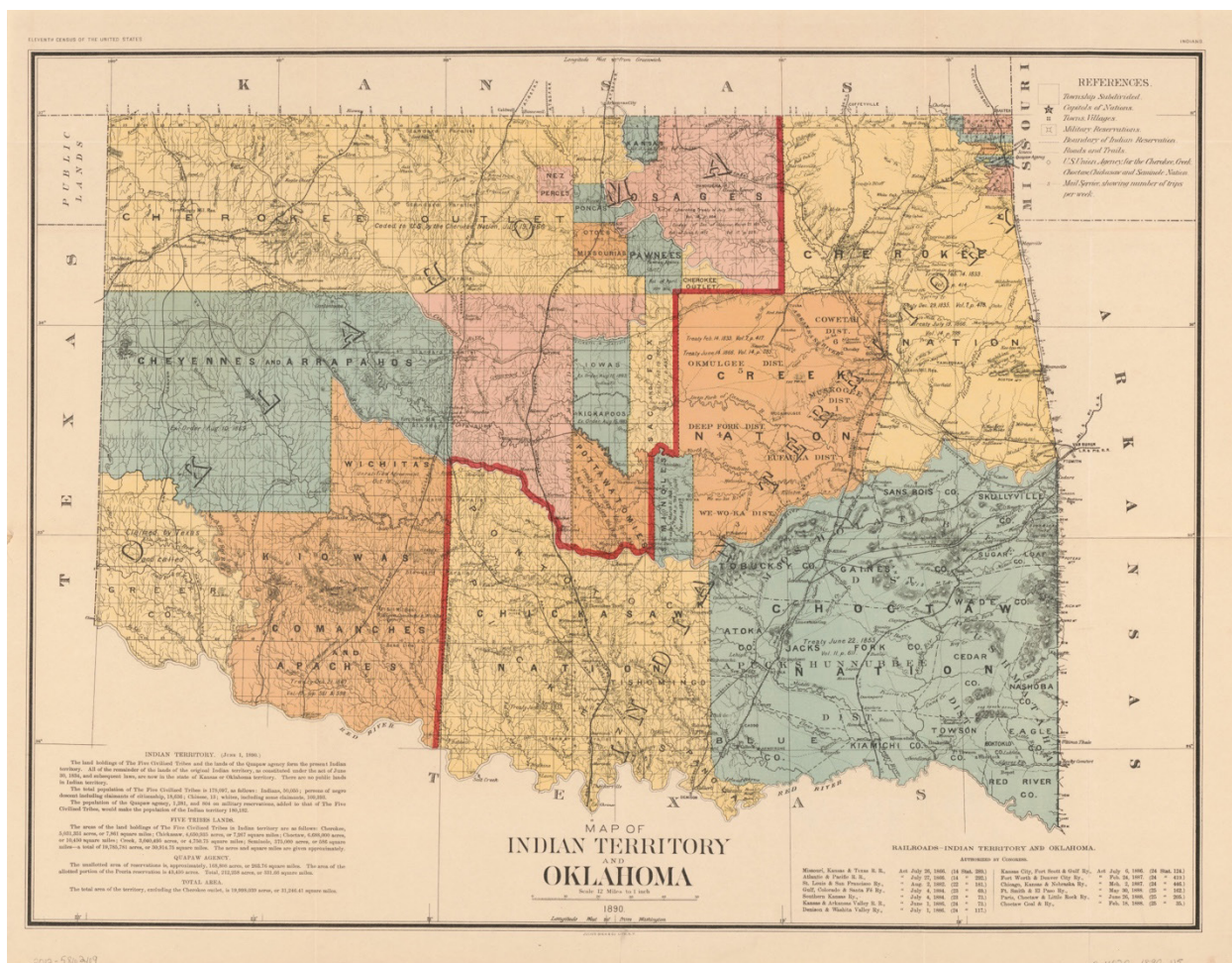
The Cheyenne who surrendered at Fort Sill were told to proceed to Camp Supply, 180 miles north, almost to the Kansas border within Indian Territory. Little Robe and most of the Cheyenne did not go directly there, and there was much dissension about what to do. Little Robe told the Dog Soldiers that they must either agree to live on the Medicine Lodge Treaty reservation or leave the country. Dog Soldier leaders Tall Bull and White Horse stated that they would "go north and join the Sioux, that they would never make peace that would compel them to settle down, they had always been a free nation, and they would remain so or die."²⁴ Approximately 165 lodges of Dog Soldiers headed north and reoccupied the Republican River region in Colorado-Kansas-Nebraska.

U.S. troops, led by Major E.A. Carr, pursued the Dog Soldiers. Battles waged back and forth from May to August of 1869. At the battle of Summit Springs, near present-day Sterling, Colorado, the Dog Soldiers suffered a decisive defeat, losing 52 warriors. Tall Bull was killed. Some survivors of his band joined Lakotas to the north at White River (present-day South Dakota). Most eventually surrendered at Camp Supply. "The Battle of Summit Springs thus ended Cheyenne occupation and use of the region between the Platte and Arkansas rivers."²⁵ The United States' relentless campaign to rid the Central Plains of their historic Native residents had succeeded.

Ulysses S. Grant was elected U.S. president in November 1868 and assumed office in March 1869. He appointed members of the Society of Friends (Quakers) to take over administration of Indian policies and reservations on the Southern Plains. In late summer 1869, the Cheyenne and Arapaho and the U.S. government were at a stalemate as to the location of their reservation. The MLT reservation was unacceptable to the tribes. The waters of the Salt Fork of the Arkansas were too salty for livestock, and they rightly feared being so close to

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white Kansas settlers, known for thieving and depredations against Indians. They had never understood the boundaries described in the Medicine Lodge Treaty and demanded instead land farther south along the Canadian River. General Hazen and other U.S. officials supported the Canadian River location, with its better water, timber, and more fertile land. By executive order, President Grant created a new Cheyenne and Arapaho reservation on the north fork of the Canadian River—another indication that treaties with Native people were arbitrary to the U.S. government. The Executive Order Reservation comprised about 4.3 million acres. (The Wichita allotment on the map below was taken out of the Cheyenne-Arapaho land in 1872.)



Map of Indian Territory and Oklahoma, 1890. (U.S. Census Bureau, 1890, from Wikipedia at https://en.wikipedia.org/wiki/Indian_Territory#/media/File:Map_of_Indian_Territory_and_Oklahoma.LOC_2012586269.jpg)

In Colorado, the white population was increasing. New mechanized extractive and ore processing technology revived the mining industry. The occupier population of towns such as Leadville and Black Hawk burgeoned, as did that of mercantile and rail towns like Denver, Golden, and Boulder. Treaties that guaranteed these places to Utes, Cheyennes, and Arapahos were ignored or obfuscated. Due to his role in the Sand Creek Massacre, John Evans, Colorado

Territory's governor, was forced to resign in 1865. By 1868 he was president of the Denver Pacific Railroad, which connected to the Union Pacific at Cheyenne, Wyoming, in 1870. With Indians "out of the way," the colonists built railways, roads, and towns. Boulder, Colorado, provides an example of this illegal process:

In 1851 fifty-three Anglo-American squatters platted lots at the mouth of Boulder Canyon, defying the Horse Creek Treaty of 1851. By 1871, after twenty years of illegal mining in the mountains west of Boulder, the city was incorporated, despite sitting on unceded Arapaho and Cheyenne land. The Colorado Central and Denver & Boulder Valley Railroads arrived in 1873. By 1880 the population exceeded 3,000.

Grant appointed a Quaker, Brinton Darlington, as Agent for the Southern Cheyennes and Arapahos. A committee of Quakers supervised Darlington's work, sometimes countermanding his decisions. This imposition of control by Christian religious denominations over Indigenous reservation communities characterized Grant's Indian policies. By May 1870 Darlington had shifted the agency headquarters to the Canadian River area. Gradually over the next few years Arapaho and Cheyenne bands settled on the reservation, though they frequently left to hunt buffalo. Some Cheyenne bands migrated frequently from south to north and back. For instance, some Cheyenne led by White Horse joined the Northern Cheyenne. Dog Soldiers under Bull Bear and Medicine Arrows spent the summer of 1870 with Lakotas north of the Platte.

The period from 1869 to 1875 was fraught with uncertainty for the Southern Arapahos and Cheyennes. Members of both tribes relied on the Indian agent for rations and annuities, but did not always require these because bison remained plentiful to the west. When Agent Darlington died in 1872, John D. Miles, another Quaker, replaced him. Most Southern Arapahos settled near the agency on the Canadian. To the west, on the reservation and beyond, there were still bison herds. In the early 1870s it was still possible for the people to be self-sufficient, harvesting bison for meat and robes. Even the more settled Arapaho were not tied down.

The tribes' possession of robes, still much in demand in the eastern United States, along with other tradable goods, lured white traders. Traders from Kansas, including whiskey bootleggers, chronically cheated the Indians. They were happy to get men addicted to alcohol and trade it for robes.

Mass killing of bison by white commercial hunters was a growing problem. White hunters from Texas, New Mexico, and Kansas diminished the tribes' herds and forced them to travel farther to hunt. The whites killed bison for their hides, leaving the meat to rot.

Eastern tanners paid good prices for buffalo hides after 1871. Millions of the beasts were shot for their hides alone—the best estimate being about 7,500,000 in the years 1872-74. ... Officially nothing could be done to check the decimation of the herds in the states of Kansas and Texas or the territories of New Mexico and Colorado. Federal jurisdiction over citizens was limited in this case to the Indian reservations, an area too small to protect adequately the number of buffalo necessary for Indian use. So this irritant continued unabated.²⁶

Both Arapahos and Cheyennes maintained large herds of horses. White thieves from Kansas repeatedly stole horses, selling them across the border in Kansas.

During this period, the actual location of the reservation was not settled. Darlington advocated expanding the Executive Order Reservation eastwards to include more land suitable for agriculture, as the western reservation was not cultivable. This never happened. The Medicine Lodge reservation, just south of the Kansas border, had never been formally ceded. In autumn of 1872 a delegation of Southern Arapahos went to Washington and, under pressure, signed an agreement relinquishing title to the Medicine Lodge Treaty land. No Cheyennes attended these meetings. Because Arapahos pursued a strategy of interacting with whites and adopting their technology as needed, Bureau of Indian Affairs officials proposed separate reservations for Southern Arapahos and Cheyennes. There was even a proposal to send the Southern Cheyennes to join their Northern cousins. None of this materialized. This continual shifting of boundaries and withdrawal of promises increased distrust and uncertainty for the tribes. In 1871 the U.S. Congress declared that tribes were not independent nations and ceased the making of treaties. This unilateral, imperialistic act intensified both distrust of the United States and the tribes' uncertainty about their fate.

During this period small groups of Cheyennes, both Southern and Northern, moved frequently back and forth between the Oklahoma Indian Territory and the Powder River region. Some Cheyennes, mainly Dog Soldiers, went to live with the Kiowas in less-policed lands toward the Texas Panhandle. There they continued to raid the white roads and battle with Utes and Pawnees.

The majority of the Cheyennes clearly favored peace with the whites; that was the only concession the tribe was willing to make. They refused almost unanimously to send their children to the agency school, begin cultivation of crops, or to listen with much tolerance to the Quaker preachment of Christianity's virtues.²⁷

The Atlantic and Pacific Railroad announced that it intended to build a line up the North Canadian River. Survey parties appeared in the area, alarming the displaced tribes.

As more bands moved near to the agency, the U.S. Congress did not increase food supplies.

Hunger and undernourishment were common. Disease increased with malnutrition.

Preyed upon by white traders and thieves, threatened by railway builders and alcohol pushers, facing diminishing bison herds, uncertain of their land base, and, most of all, perceiving that their free way of life was endangered, Southern Cheyennes and some Arapaho men went to war again. Cheyennes, Comanches, Kiowas, Apaches, and Arapahos united to battle against their U.S. tormenters, attacking the hunting-trading headquarters at Adobe Walls in Texas (in the second battle of Adobe Walls on June 27, 1874), and burning wagon trains along the Santa Fe Trail.

Interestingly, U.S. Major General John Pope advocated against defending the white hunters and bootleggers, calling them outlaws who committed “violent and inexcusable outrages upon the Indians” and who “have justly earned all that may befall them.”²⁸

General Sheridan disagreed. He flooded western Indian Territory and the Texas Panhandle with U.S. troops. From August 1874 to August 1875 the U.S. military relentlessly pursued the Cheyenne and other tribal warriors throughout the region, gradually taking them prisoner or forcing their surrender. Some Southern Cheyenne warriors fled north toward the Powder River Country, but most were ultimately returned to the southern reservation. This Red River War ended the Southern Cheyennes’ freedom and ability to resist a numerous, well equipped U.S. military. The forcing of the Southern Arapahos and Cheyennes from their Colorado homeland ended in confinement 500 miles to the southeast.

Historian Donald J. Berthrong’s account—*The Cheyenne and Arapaho Ordeal: Reservation and Agency Life in the Indian Territory, 1875-1907*—is accurately titled. In his introduction, Berthrong delivers this summary:

Cheyenne and Arapaho populations declined by at least 20 percent between 1875 and 1907. Infant mortality was high, and children from poor families were weakened by malnutrition and suffered early deaths from infections. Young men and women died in alarming numbers from tuberculosis. Only the hardest people survived to old age, and then many were handicapped by arthritis or blinded by trachoma, which also afflicted a majority of boarding-school pupils.²⁹

The Department of the Interior and the Quaker agency administrators intended to “civilize” the Arapahos and Cheyennes. To them this meant “grind[ing] the Cheyennes [and Arapahos] into cultural submission and remold[ing] them into replicas of white Christian farmer-citizens with red skins.”³⁰ In their own ways both tribes resisted. The U.S. government never appropriated enough funds to make agriculture viable for the tribes, or even for them to have adequate nutrition or medical care. Even the best land near the Canadian River Valley was not consistently productive. Despite the ostensibly humane and “civilizing” goals of U.S. policy, the actions taken by the United States ultimately stripped away the tribes’ reserved lands and

placed them in the hands of white citizens.

For a time, during 1877-79, as many as 2,000 Northern Cheyennes were forced to reside at the Southern Agency. This compounded scarcity. The Northerners suffered greatly from disease and restriction in the concentration-camp-like conditions. In 1879 most moved back north when promised a reservation near the Pine Ridge Agency. However, a few hundred, who had intermarried with Southerners, remained. The Northern Cheyenne Exodus is documented by Richard B. Williams in his report to TREC.

In 1872 more than 760,000 acres of the Cheyenne-Arapaho Executive Order Reservation were taken away and assigned to the Wichitas and Affiliated Bands. The United States policy of concentrating tribes in Indian Territory continued.

Many Arapahos, and some Cheyennes, attempted agriculture. But “the most persistent factor in explaining the lack of agricultural progress ... was the climate of the Southern Plains. Even when the Indian men put aside their disdain for farm work, their labor was not likely to be productive because of the sparse rainfall during the growing season.”³¹ Most of the reservation was more suited to cattle ranching than raising crops, though the U.S. government continued preaching an ideology claiming farming to be a “civilizing” influence. Forced out of their sustainable Central Plains environment, both Peoples struggled to survive.

Miles, the reservation agent, was corrupt in many respects. He gave monopolies to favored traders and, later, bled money from the amounts paid to the tribes for their “surplus” land. But he also advocated strongly, and increasingly realistically, for the Southern Cheyenne and Arapaho. In the early 1880s he called for a stock raising economy on the reservation. Arapahos who had settled on the bottomlands of the Canadian River had built strong herds; smaller numbers of Cheyennes had done the same. Miles encouraged this and wrote the Indian Bureau and Congress requesting investment in cattle. Yet Miles decided that leasing the land to white cattlemen should be the main revenue source for the tribes.

The agent for the Kiowa-Comanche Reservation to the south was already collecting a tax from white cattlemen to graze their herds there. The Cherokees were renting land to white stockmen in the Cherokee Outlet to the north. In December 1882 Miles called a council of 200-300 Arapahos, Cheyennes, and white cattlemen at agency headquarters. The cattlemen had provided money to key tribal members, agency employees, and traders to “persuade them to sign the document granting grazing privileges for about 2.4 million acres of the reservation. ... Later the cattlemen denied before a United States Senate committee that any money had been used to influence the Indians.”³² Even before this council, white ranchers had been grazing cattle on reservation land, sometimes paying under the table for it. Rent was set at two cents an acre to be paid semi-annually. The U.S. secretary of the interior approved the arrangement, being careful to stipulate that these were licenses to graze, not leases of land.

Contesting among cattlemen for the best rangeland, cattlemen selling their licenses to other companies, lobbying of the Indian agent and Congress for more grazing licenses ... resulted in

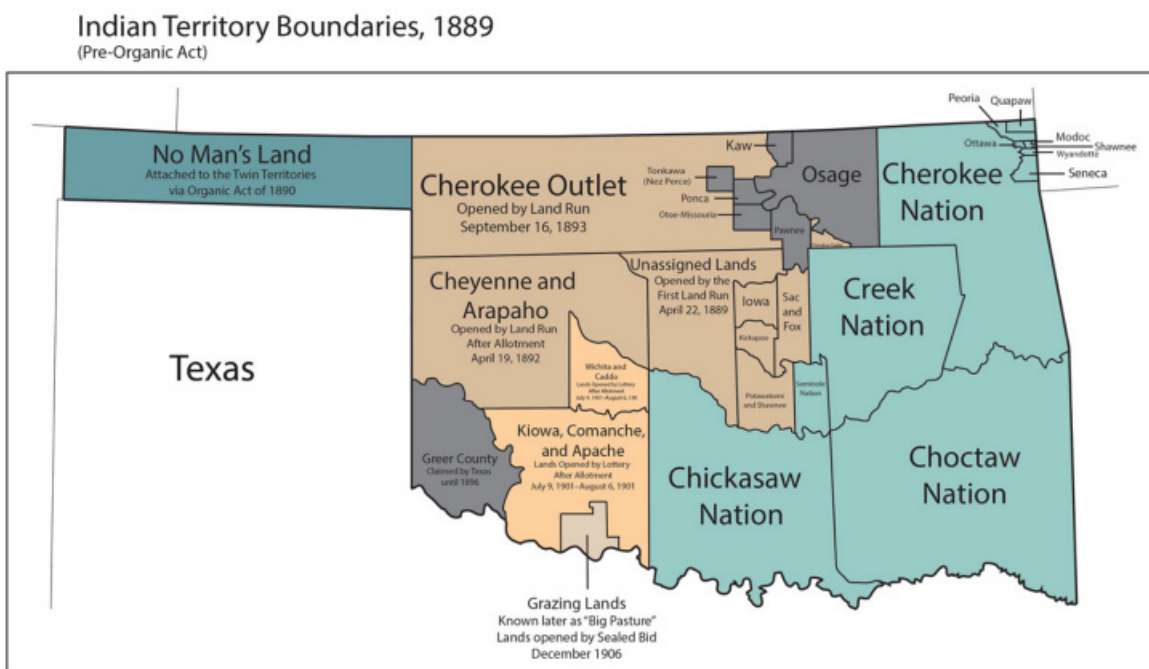
pervasive confusion and corruption, and in “the Cheyennes and Arapahoes [being] restricted to a mere 426,202 acres of their 4,294,412-acre reservation.”³³ While some Cheyenne and Arapaho leaders agreed to the leasing, most tribal members opposed it.

In December 1884, a delegation of Cheyenne and Arapaho chiefs met with Secretary of Interior Teller to object to leasing. Powder Face of the Arapaho stated that the white men’s cattle and employees prevented his people from use of their lands: “My horses and cattle are lost” among the vast white men’s herds.³⁴ Whirlwind of the Cheyenne said the reservation boundaries were becoming meaningless.

Further resistance to white ranchers’ occupation of the reservation came from young men, mainly members of the Cheyenne Dog Soldier societies. They steadily killed invaders’ cattle to supplement the meagre government rations.

The rangeland grazing policy weakened both tribes’ control of their reservation and diminished their trust in the commitments made by the U.S. government at Medicine Lodge and subsequently. Conflicts between the cattle interests and opposition from the tribes caused U.S. President Grover Cleveland to order the leaseholders off the reservation in 1885. This expulsion represented a victory for the tribes, but also a loss of revenue.

Pressure from whites to take Indian lands mounted. The Boomer Movement (1879-1889), led by determined squatters such as David L. Payne, campaigned to open the “unassigned lands” in Indian Territory to white settlement. Payne and his followers were repeatedly arrested as they attempted to occupy land in Indian Territory.



Indian Territory Boundaries, 1889. (Oklahoma Historical Society, n.d. <https://www.okhistory.org/research/airemoval>)

Eventually U.S. Congressman William Springer of Illinois tacked an amendment onto a spending bill to open the unassigned lands. President Benjamin Harrison signed the bill, and a land rush of white (and some Black) settlers ensued on April 22, 1889. Suddenly the Southern Cheyenne and Arapaho had thousands of white invaders occupying over two million acres immediately to their east.

Meanwhile, the U.S. Congress passed the Dawes Act (General Allotment Act) in 1887. The act required the division of reservation lands into plots owned by individual Indigenous persons. The rationale used by patronizing white reformers was that ownership of private property would influence Natives to become “civilized” yeoman farmers. The Dawes Act also required abolition of tribal governments, mandated Indian children to attend boarding schools, and called for the sale of “surplus” land after allotments were made.

Historian Daniel Berthrong described the state of affairs in 1889:

In 1889 various factors combined to lead toward the application the Dawes Act to the Cheyenne-Arapaho Reservation: the Indian Office and Congress were driving toward the goal of making citizens of reservation Indians, western farmers and ranchers were looking longingly at Indian lands as the last major unsettled area, on the public domain fertile land was becoming scarce, and private individuals were hoping to divert to their pockets a portion of the funds paid to the Indians for ceding their lands.³⁵

Historian William T. Hagan, in his aptly titled book, *Taking Indian Lands: The Cherokee (Jerome) Commission, 1889-1893*, describes the U.S. government’s successful effort to wrest 23,595 square miles of land from the Cherokee, Iowa, Sac and Fox, Potawatomi, Shawnee, Cheyenne and Arapaho, Wichita, Kickapoo, Tonkawa, Kiowa, Comanche, and Apache Peoples in Indian Territory. The Jerome Commission was appointed to get the tribes to accept allotment and to force them to sell “surplus” land at the lowest price possible. Further, the commission was tasked to get the Cherokees to sell the Cherokee Outlet (see map above), which in the 1830s was designated as hunting range for the Cherokees after the Trail of Tears; however, major portions of this same land were also promised to the Cheyenne and Arapaho by the Medicine Lodge Treaty.

David H. Jerome, a former governor of Michigan, headed the commission. Negotiations with the Southern Cheyenne and Arapaho occurred in July and October of 1889. At that time, the Southern Cheyenne population was counted at 2,272; the Southern Arapahos at 1,100. The tribes were living on the 1869 Executive Order land and receiving rations and the annuities called for by the Medicine Lodge Treaty. Yet they had never ceded the land in the Cherokee Outlet that the United States had promised them, though it was already designated for the Cherokees. Secretary of Interior John W. Noble commanded Jerome not to pay twice for the

Outlet. Noble was also concerned that the MLT required approval of any cession by three-fourths of the tribes' adult males. He ordered Jerome to get three-fourths to sign any agreement, if possible, "but close with a majority if you cannot get more."³⁶ The legislation forming the commission authorized payment for land at \$1.25 per acre. However, the commission had bullied the Tonkawas into accepting 30 cents per acre, and Noble urged Jerome to pay far less than \$1.25/acre for the "surplus" land.

Miles, the Cheyennes' and Arapahos' former agent, along with some frontier attorneys were supposedly representing the tribes in the negotiations. A vaguely worded contract, signed under deceptive circumstances in May 1869 in Oklahoma City with a tiny group of Cheyenne and Arapaho chiefs, called for the attorneys to receive ten percent of any settlement. It was often difficult to determine whose side the attorneys were on. They frequently held sub rosa communications with the commissioners.

Jerome and the other commissioners employed a combination of threats and cajoling to persuade the tribal leaders to sign their land away:

Jerome insisted, "the buffalo will never come back ... and the Indian must live by growing something out of the ground or else he will starve." He also warned them that their annuities under the Medicine Lodge Treaty would lapse in seven years. In the first few minutes of his presentation Jerome raised the specter of the Dawes Act: "If you don't do what the President wants you to do, the law of Congress will be put in force ... you won't have anyone to come and see you as this Commission has done." The president, Jerome continued, "hopes you will do what is better for you than would be done if you wait till force is used."³⁷

Cheyenne chiefs Old Crow and Whirlwind adamantly opposed selling. Arapahos Left Hand, Tall Bear, Elk Tongue, and Cloud Chief were willing to bargain, but demanded a much higher price. There was great confusion and deception as to which land the tribes were selling: Was it the 1867 reservation in the Outlet or the one they currently occupied? In October 1889 Jerome stated that the tribes were selling "any rights they might have" in either. The commissioners held fast to a price of just 50 cents per acre. More Arapahos than Cheyennes attended the meetings and were willing to sell. It came down to bullying by the commissioners:

Jerome finally announced, "the time has come to sign." He asked Left Hand, as the eldest chief present, to sign first. Left Hand agreed to do so but observed that the opposition still held the majority. Since most of the Cheyennes had been boycotting the meetings, satisfying the Treaty of Medicine Lodge's requirement for the approval of three-fourths of the adult males to validate any cession would require a lot of canvassing. Jerome and his colleagues would get help from the

attorneys, whose only hope of collecting any fees rested on the Indians' agreeing to sell. Although it cannot be documented conclusively, it is highly likely that it was money provided by the attorneys that persuaded a handful of Cheyennes and Arapahos to persuade enough of their fellow tribe members to sell.³⁸

Hunger played a role in forcing acceptance of the cession agreement. In the previous year beef rations to the tribes had been cut in half, and bison herds were rapidly dwindling. By the 1880s nearly all the Southern Plains bison herd was gone.

The process of gaining signatures to the land cession agreement was fraught with corruption: bribes paid for signatures, payments made to influential tribal members to gather signatures, and manipulation of the numbers. Charles F. Ashley, the Indian agent at the time, claimed that, of the approximately 3,200 members of the Southern tribes, 2,000 were under 21 and only 618 were adult males. Therefore, he claimed only 464 signatures were required.

It is very unlikely, however, that almost 2,000 ... were younger than twenty-one. The declining birth rate of the tribes because of malnutrition and venereal disease and the high incidence of tuberculosis and other diseases during the decades before 1890 indicate that Ashley's figures have little credibility. It is likely that Ashley knew that he should have submitted 680 signatures but that they were simply not available. He merely did the best he could, and never was challenged by government officials to justify his calculations.³⁹

The valid protest of the cession agreement by Cheyenne chiefs Old Crow, Young Whirlwind, Little Big Jake, White Horse, White Shield, Red Moon, and Wolf Face in January 1891 was ignored. Congress approved the agreement on March 3, 1891. The Cheyennes and Arapahos ended up with fifty cents per acre (about \$55 per person) and a location on the 1869 Executive Order land. \$67,000 of their money was diverted to the corrupt attorneys.

The U.S. government and the Boomers achieved their objective through the Jerome Commission's corrupt dealings. Under tremendous pressure from the Boomers, allotment crews roamed the Executive Order Reservation, hurrying to survey and allot 80 acres of cropland and 80 acres of grazing land to each tribal member. Supposedly Cheyenne and Arapaho families could select their allotments; when they hesitated or refused to participate in an illegitimate process, the Agent did it for them. As the cession money was paid out to families, they purchased work horses, livestock, and farm implements from white traders, who cheated them terribly. On March 29, 1892, when allotments were completed, tribal members had been assigned 3,329 allotments.

Of the 4,294,415 acres of the reservation the Cheyennes and Arapahoes retained 529,692 acres, while 231,828 were reserved for school or educational

purposes and 32,343 were set aside for military reservations. Slightly more than 3.5 million acres were available for homesteaders.⁴⁰

Only 12 percent of their reservation remained in Cheyenne and Arapaho possession. At noon on April 19, 1892, 25,000-30,000 non-Indian settlers were permitted to make a land run into the “surplus” acreage of the Cheyenne-Arapaho Reservation. That is, ten times the tribal population flooded the area. In 1893, the Cherokee Outlet, just north of the Cheyenne and Arapaho lands, was opened to a land rush of 100,000 white settlers.

Cheyenne and Arapaho populations declined by at least 20 percent between 1875 and 1907. Infant mortality was high, and children from poor families were weakened by malnutrition and suffered early deaths from infections. Young men and women died in alarming numbers from tuberculosis. Only the hardest people survived to old age, and then many were handicapped by arthritis or blinded by trachoma, which also afflicted a majority of boarding-school pupils.⁴¹

This period, and on into the 1930s, was indeed an ordeal for the Southern Arapahos and Cheyennes. In addition to hunger and disease, forced attendance at boarding schools and the banning of Indigenous spiritual practices represented genocidal attacks on the tribes. The white religionists appointed to administer reservation affairs and U.S. governmental policy aimed to assimilate and “civilize” Native people.

Tribal members continued to lose land. The Dawes Act required allotments to be protected from alienation (transfer or sale of allotments from the original owner except by inheritance) for 25 years. However, white settlers and corporations devised methods for acquiring many Indians’ tracts before and after the 25-year period. “As whites continued to move into I.T. [Indian Territory], their numbers increased from 110,254 in 1890 to 302,680 in 1900. They outnumbered American Indians by a ratio of 3 to 1 in 1890 and a ratio of 6 to 1 in 1900.”⁴²

“By the early 20th century, life on reservations was similar to life in the homelands of apartheid South Africa—people had no freedom of movement, they had no freedom of religion. Basically all their rights were taken away.”⁴³

Simultaneously the Cheyennes’ and Arapahos’ land in Colorado was turned to serving the whims and purposes of its occupiers. In 2023, as this report is written, the Boulder Chautauqua Association is celebrating the 125th anniversary of its founding on land used by Left Hand’s Arapahos for their winter residence. Few who attend the celebrations will realize that the stately old buildings sit on stolen property, for which the Arapaho never received compensation.

Upon occupying most of Indian Territory, white settlers pressured the U.S. government for statehood. The U.S. Congress passed the Organic Act of 1890, establishing a territorial government for Oklahoma Territory (OT, present-day western Oklahoma) and defining the boundary

between Oklahoma Territory and Indian Territory (IT). The Curtis Act of 1898 further eliminated tribal governmental and judicial systems, withdrawing recognition of traditional leadership and decision making, and increasing the power of the majority white settlers. After much wrangling over whether OT and IT should be admitted to the United States separately or as a single state, Oklahoma was made a state in 1907.

Throughout the late 19th and early 20th centuries, and into the present day, Arapahos and Cheyennes strived successfully to retain their history, culture, and languages. Despite genocidal attacks they survive as the Cheyenne and Arapaho Tribes, headquartered in Concho, Oklahoma.

As documented by Richard B. Williams in his report to TREC on the Northern Cheyenne, through the Indian Claims Commission proceedings in the 1950s and 1960s, the Cheyenne and Arapaho received minimal compensation for their loss of land and none for loss of life, debilitated health, cultural damage, and loss of property. The claim of the Southern Arapahos and Cheyennes was considered during the 1960s:

- July 28, 1961. Cheyenne-Arapaho Tribes of Oklahoma were permitted to file their own petition, separately from the northern Cheyenne and Arapaho, for compensation for 51,210,000 acres in Colorado, Wyoming, Kansas, and Nebraska that they owned by virtue of the Fort Laramie Treaty of September 17, 1851. In 1955 the Commission had determined that the Cheyenne and Arapaho tribes had owned these lands. This admission was quite important.
- December 6, 1961. The Commission determined the value of the lost Fort Laramie Treaty lands was \$23,500,000 as of October 14, 1865. The Commission's records do not document how a value of only 45 cents per acre was arrived at.
- October 6, 1962. Commission and tribes agreed that the Southern Arapahos' and Cheyennes' share of the claim would amount to 50.61% of the total compensation based on the tribes' relative populations as of November 1958.
- November 13, 1962. The Commission determined that the "consideration paid to the Southern Cheyenne and Arapaho Tribes" from the Fort Wise, Little Arkansas, and Medicine Lodge Treaties was \$1,434,131.38, but that there was "not sufficient evidence" to determine the value of the Executive Order land conveyed to the tribes in 1869 and "whether the said consideration so paid was unconscionable." The tribe was invited to

- submit evidence of this land's value and the loss in value incurred as the Executive Order grant was subsequently severely reduced.
- May 24-27, 1965. The Commission held a hearing to determine whether the \$1,500,000 paid when the United States took 4,608,878 acres from the Executive Order Reservation in 1891 was "unconscionable."
 - August 12, 1965. After negotiations, an offer of \$15,000,000 was accepted by the tribe's attorneys as settlement for all claims, subject to the tribe's approval.
 - September 18, 1965. At a meeting in Watonga, Oklahoma, the settlement was accepted by a vote of 338 in favor and 2 against. Notice of the meeting had been mailed to 1542 enrolled members.

Given that the United States Bureau of Labor Statistics calculates that it would have taken more than \$193 in 1965 to have the same buying power as \$100 in 1865, the \$15,000,000 settlement offered the Southern tribes was unfair. Their 50% share of the alleged \$23,500,000 value in 1865 of the Fort Laramie Treaty lands was \$11,750,000 in 1865 dollars, or \$22,677,500 in 1965.

Moreover, this calculation leaves out the value of lands lost from the Executive Order Reservation and land promised but never delivered in 1861, 1865, and 1867. Historian William T. Hagan wrote:

In 1965 the commission also heard testimony on the value of the 1869 executive-order reservation on which the Indians were living when they were approached by the Cherokee Commission. The Indians maintained that the \$1,500,000 they received for the land ceded to the United States under the terms of the 1890 agreement was "unconscionable." Apparently the Justice Department attorneys were persuaded of this as well, as the government offered to settle all the claims of the southern branches of the Cheyennes and Arapahos for \$15,000,000.⁴⁴

The Indian Claims Commission only considered land claims. It did not address the economic losses, or the suffering incurred as the imperial United States and its citizens forced the Cheyenne and Arapaho from the plains of Colorado.

The campaign by Evans, Chivington, invading miners and homesteaders, illegal city plat- ters, and the U.S. government's military and interior departments to drive the Cheyenne and Arapaho People from their homelands on the Colorado, Kansas, and Nebraska plains largely succeeded. The depredations and massacres in Colorado during the 1850s and 1860s led to exile and trauma, impossible to fully redress, but redress was not and never has been honestly attempted.

ENDNOTES

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38 Ibid., 79.

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40 Ibid., 175.

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Cheyenne and Arapaho Tribes of Oklahoma

Truth, Restoration, and Education Commission (TREC) Recommendations

1. It is recommended that the State of Colorado compensate the Cheyenne and Arapaho Tribe for pain and suffering (and mental distress) resulting from illegal trespass.¹
2. It is recommended that the State of Colorado compensate the Cheyenne and Arapaho for all mineral wealth extracted through illegal mining before any legal land cession.²
3. The State of Colorado is recommended to compensate the Cheyenne and Arapaho for the water rights they inherently owned as part of their Treaties in Colorado.³
4. It is recommended that the State of Colorado and the Federal Government investigate the removal of Article 11 by the U.S. Senate in 1861 and the subsequent amendment required to ratify the treaty.⁴
5. It is recommended that the State of Colorado fully compensate the Cheyenne and Arapaho for its role in the forced removal of Cheyenne and Arapaho.⁵
6. It is recommended that the State of Colorado fully compensate the Cheyenne and Arapaho for its role in the deaths caused at the Sand Creek Massacre and support federal legislation to pay the Cheyenne and Arapaho descendants of the Sand Creek Massacre.⁶

7. It is recommended that the State of Colorado restore rights to the Cheyenne and Arapaho for unrestricted cultural and traditional land use within the aboriginal territory, on all public lands in Colorado (federal and state), and must restore hunting and fishing rights, collecting medicine plants or any other historical culture use of the land.⁷

8. It is recommended that the State of Colorado provide monetary use compensation or railway land to the Cheyenne and Arapaho, and when a railway is abandoned, return the land to the Cheyenne and Arapaho.⁸

9. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Cheyenne and Arapaho Tribe and other Tribes that may be located within the external boundaries of the State of Colorado access to funding that is available to other counties, municipalities, and non-profits. The State of Colorado should support all efforts for the Cheyenne and Arapaho to protect sacred sites in Colorado.⁹

10. It is recommended that the State of Colorado no longer assess property taxes on federally recognized enrolled Cheyenne and Arapaho members living within the external boundaries of the State of Colorado.¹⁰

11. It is recommended that the State of Colorado support the Cheyenne and Arapaho Nation in its efforts to have the Indian Claims Commission settlement opened for appeal.¹¹

12. It is recommended that the State of Colorado authorize all higher education institutions funded by state funds to provide all enrolled members of the Cheyenne and Arapaho Nation tuition waivers and room and board. The Cheyenne and Arapaho's land was used to create CSU.¹²

13. The State of Colorado should introduce legislation to establish a negotiated fee for all future real estate transactions to create a permanent fund to compensate the Cheyenne and Arapaho for their losses while simultaneously helping to improve their economic standing.¹³

ENDNOTES

1 Beginning in 1834 with the Indian Trade and Non-Intercourse Act, invaders were prohibited from settling on American Indian Land in the west. The Cheyenne and Arapaho land is all located within the boundaries of the Act, and the intruders, invaders, squatters, and such moved into areas owned by the Tribes. The devastation diminished the welfare of the Cheyenne and Arapaho people. This violation was not corrected by any agency even when they knew the occupation was illegal.

2 The Front Range and up to the continental divide were all legally titled to the Cheyenne and Arapaho, yet in one year (1859), 100,000 trespassers invaded the land and mined the gold that was available. The Cheyenne and Arapaho were never compensated for the gold taken from 1858 to the present. These mineral rights were not precisely calculated, and the years used to determine the value were questionable. In addition, the treaty must expressly state that all rights both surface and sub-surface need to be specifically cited in the treaties.

3 Water rights are inherent within Treaty rights and need not be stated. The State of Colorado has never compensated the Cheyenne and Arapaho for their water rights. The Treaty had to expressly state that water rights were a part of any treaty.

4 There are suspicious circumstances regarding the US Senate's removal of Article 11. The amendment was required by the State Department, and several places in the amended document contain erasures, possible date changes, and outright misrepresentation of signatures. Any of these call into question the validity of the Amendment to Article 11. This directly impacts Denver and approximately 20 other cities in Colorado that were established before 1861.

5 The forced removal was an act of genocide. The Territorial Governor Evans failed in his duties as the Superintendent of Indian Affairs, and the state should be held liable for his actions. There must be a full investigation of acts of genocide, with each incident reported for the public record, and the victims should be compensated for the wrongful action. The illegal proclamations caused measurable harm and should serve as the center of this investigation and calculation for loss of life and property.

6 The State of Colorado, through the illegal actions of Territorial Governor Evans and the Colorado militia, has significant culpability for the murders and destruction, and they need to lead the way to compensate for any losses associated with the loss of life and other damages. The Federal Government shares the blame for the action and, as the trustee and guardian of the Tribal Nations, should lead the effort to compensate the descendants.

7 The State of Colorado and the Federal government must provide free access to any locations that the Cheyenne and Arapaho people used for ceremonial purposes, for collection of plants for medicinal purposes, and land for hunting buffalo are no longer available to the Cheyenne and Arapaho people.

8 The State of Colorado's economy flourished when the railroads were given land via the Rail-

road Act. At no time did the Cheyenne and Arapaho people benefit from these land transfers.

9 The current legislation does not allow Tribal Nations to access GOCO resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes. The US Forest Service states that over 200 sacred sites must be protected.

10 The Cheyenne and Arapaho people who live off the reservation have a reserved right not to pay state property taxes as they are still living within their homelands. The status granted by the United States Citizenship Act in 1924 protects Cheyenne and Arapaho members with a protectorate clause.

11 In the reviews of the Indian Claims Commissions dockets 329 and 348, there are significant issues with the process. The calculations to determine values were biased. The issues of the unratified Treaty of 1851, along with the illegal taking of the land within the boundaries of the Fort Wise Treaty of 1861 are all questionable. The final award to the Cheyenne and Arapaho Agreement contained unscrupulous and dishonorable dealings on the part of the United States government. In addition, the Indian Claims Commission Docket 329 A and 329 B (16 Ind. Cl. 612 and others left numerous issues unresolved, and when the Tribes inserted a petition to reserve the rights for appeal, they were automatically barred by Sec. 22 of the ICC rules. This is an injustice that compels and argues for an appeal. In other ICC cases, when an ICC Commissioner (Defendant) objected to an ICC ruling, the issues were appealed to the Court of Claims. This created an opportunity to appeal a ruling by the ICC, where no such right exists for the Tribes (Plaintiff) in ICC actions. This is inherently discriminatory, and all ICC settlements should be appealable.

12 The State of Colorado has a duty and moral responsibility to help the Cheyenne and Arapaho People recover from the losses associated with the sordid history and treatment of American Indians in the past. All schools in the state benefit from land that belonged to American Indians. The School Fund received 4 million acres of land in Colorado to support schools, and the Cheyenne and Arapaho students have yet to benefit from this resource. Every Cheyenne and Arapaho child should receive an exceptional educational experience with tutors and financial assistance to enhance achievement. It is also noted that Colorado State University received substantial Cheyenne and Arapaho land to help start the institution and still holds 19,000 acres of land and a healthy endowment. The Cheyenne and Arapaho Nation and their students have not seen any significant opportunities to increase their acceptance and success at CSU.

13 This effort would do the least harm to current Colorado residents while compensating for past wrongs and creating restorative justice.

Cheyenne History

PART I

The Legal and Political History of the Northern Cheyenne 1825-1864

INTRODUCTION

This report and the attached materials have been produced to provide the Truth, Restoration, and Education Commission (TREC) with the details, facts, and history of the Cheyenne Nation from 1834 to 1864. The primary emphasis of this report relates to the Treaties and corresponding legal documents that describe this period. The information is presented chronologically and contains related stories and other information that help the Commissioners to understand the work.

THE TRADE AND INTERCOURSE ACT OF 1834

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and also, that part of the United States east of the Mississippi River, and not with any state to which Indian title has not been extinguished, for the purposes of this act, be taken and deemed Indian Country.

SEC. 11. And be it further enacted, That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender

shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.¹

This legislation is eminently important as it declares that the Cheyenne have title to the land they occupied. The 1834 Act explicitly states that NO one was authorized to be in the area except for traders with valid licenses and military personnel. People other than those so authorized were to be removed and fined for their illegal occupation. The federal government failed to deal with the illegal occupation, which lasted for 39 years, and the inaction caused measurable harm to the Cheyenne. This illegal occupation needs to be adequately addressed. The Act was rescinded in 1873 after most of the Cheyenne land had been dispersed by other congressional acts such as the 1862 Morrill Land Grant College Act (“Morrill Act”), the Homestead Act of 1862, and the Pacific Railroad Act of 1862. As you will learn later in this document, this inaction by the United States government and the Territory of Colorado was a major cause of the Sand Creek Massacre.

WHAT IS A TREATY?

A treaty is a contract. The word has a definite and well-understood meaning. Ex vi termini it imports the idea of an agreement, and necessarily implies mutuality of assent... How then can that be considered a contract, a treaty which contains provisions prescribed arbitrarily by one of the parties without even the knowledge of the other?...

I am aware that there are several instances in which Indian treaties have been amended and promulgated as duly ratified without submitting them to the Indians for approval, but how such a proceeding in view of the legal principles involved, can be considered anything but a mockery of the highest and most solemn form of contract it is difficult to perceive.²

TREATY NEGOTIATIONS ARE A MYTH

Our research of the Cheyenne Nation’s treaties, as well as of other treaties made between Tribal Nations and the United States government, reveals a significant myth. Most people believe there were “negotiations” between the Indian leaders of Nations and the representatives of the United States Peace Commissions.³ In every treaty we evaluated, the process was the same. Treaty commissioners represented the United States government; most often, these

were military representatives who came with a prepared treaty in hand, which they read to American Indian leaders. Each article was read to the leaders of the Nations, and the leaders responded by either voicing their support or, more likely, articulating an opposing position to the article being discussed. The American Indian leaders provided clear arguments about each article and believed their oral input was being incorporated into the treaty. American Indians left the treaty meeting believing that their words had been heard and were being integrated into the written document. The United States representatives, in turn, believed they had “presented” the treaty in good faith and that nothing needed to be altered in the document before it went to the Senate for ratification.⁴

The Treaty of Fort Laramie was a classic testimony to the cultural Gulf between the Americans and the Indians of the Plains. Jefferson Davis, writing about Indian policy at a later date, captured part of the problem when he noted that quote, “*in the treaty Council oftentimes more is spoken than written.*” *As a result, he said, “the Indians have remembered whatever was impressively spoken.” The government has necessarily executed only the terms of the treaty as it was written and ratified.*⁵

CHEYENNE GOVERNANCE: THE COUNCIL OF 44

The Council of 44 governance structure is a very complex form of governance and perhaps is second only to the Iroquois Confederacy in its sophistication. The intricacies of Cheyenne governance during this period of turmoil and change—from 1825 to 1864—constantly evolved. The Council of 44 system developed over a long time and provided a delicate balance between the sacred and daily life functions of the Cheyenne People.

The Cheyenne governing system has existed for “centuries upon centuries, perhaps thousands of years” and goes to the core of our people’s existence and identity.⁶

Sheldon Spotted Elk produced an excellent law review article in 2012 that explains how the Cheyenne’s sophisticated form of governance worked.⁷ Spotted Elk describes the origin of the Cheyenne government structure in the following way:

In the contemporary literature regarding the Cheyenne government, there are three primary theories of the organization of the Forty-Four Chief structure. The first of these theories attributes the vast organizational structure of the Forty-Four Chiefs (Chief Society) to the work of a woman who was captured

by a neighboring tribe. Another theory suggests Sweet Medicine received the government structure and the Sacred Arrows from the Holy People (Ma"he-ono). The last of the theories is a story about young children that were initially deserted by the tribe but survived and were taught by the animals about the necessity of leadership. Children reunited with the tribe; they organized Forty-Four Chiefs.⁸

Spotted Elk offers a clear description of the Council of 44:

- The Council of Forty-Four Chiefs was a self-perpetuating body of tribal trustees; each member was selected by a predecessor, and in turn, each member eventually selected a successor to serve in the Chief capacity for a ten-year term.
- The Council of Forty-Four Chiefs was based upon democratic principles of representation, consensus, and access.
- It was estimated that each band had equal representation on the council, "and the ratio of forty-four chiefs for no more than four thousand is better than one representative to one hundred citizens.
- Representation was a primary concept of the Cheyenne government, where a variety of representative political and personal interests were to be embodied by the Chiefs.
- This representation permitted a spot for a non-Cheyenne, most often a Dakota, to have a voice in the Chief Society, usually by marrying into the tribe.
- It is said to have been a regularly observed rule that one member of the Council was always from an alien Indian tribe.
- This rule guaranteed formal governmental recognition of the Cheyenne-Sioux alliance by providing a voice to a non-Cheyenne.
- The foundation of the "Cheyenne social structure is the tribal council of Forty-Four Chiefs."
- In the unwritten constitution of the Cheyenne people, there is a strong separation of civil authority and military power.
- Once a Chief is chosen into the Chief Society, he maintains his membership in his military society but is no longer active.
- Chief Society membership requires a disposition for peace, even though Chiefs are usually proven warriors.
- Cheyenne governance possesses two fundamental branches, the Council of Forty-Four Chiefs (Chief Society) and Military Societies. Each branch performs a primary function; however, flexibility within the government is practiced.
- The principal duties of the Chief Society are to establish the political direction of the tribe and also to act as a judiciary.
- Separately, the Military Societies, who are subordinate to the Chief Society, perform police and martial functions.

- To prevent the vesting of the two types of office in any one individual and under the principle of checks and balances, it was required that the newly appointed Chief give up his military post.
- A Chief of a Military Society (Military Chief) could be elevated to the Council of Forty-Four, but it was necessary that he has emeritus status with his military society.
- The relinquished military post also prevented any conflicts of interest that might arise, with a Chief fulfilling his foremost duty of peace while leading a military expedition.
- Chiefs did not campaign nor graduate through age into office, but instead, they were selected among the men in the tribe with an expectation to uphold a high ethical code.
- The ideals for a man in the Chief Society were the qualities of Cheyenne leadership—“wisdom, courage, kindness, generosity and even temper.”
- Specific examples of behavior include an altruistic disposition and constantly giving to the poor. “Whatever you ask of a chief, he gives it to you.”⁹

Some research suggests the 10 bands of the Northern and Southern Cheyenne Tribe (see explanations on following pages) last gathered as one unit around the establishment of Fort Laramie in 1849 and, by 1857, had split into two geographically separated entities—the Northern and Southern Cheyenne. Other researchers indicate that all 10 bands continued to meet regularly. For example, there is clear evidence that they met and discussed the Treaty at Fort Laramie and the Fort Wise Treaty of 1861.¹⁰

The Cheyenne chiefs were responsible for the governance of the individual bands and the tribe in all major issues, especially those involving war and peace. The leaders of the societies were in charge of maintaining discipline within the tribe, overseeing tribal hunts and ceremonies, and providing military leadership. Council chiefs selected from the military societies would assume these duties; after a period of time, the chiefs would select a different society to take up the activities of the Tribe.¹¹

LIST OF THE SOCIETIES

Hemoexeo’o - Elk Horn Scrapers

Hotanetano’o - Dog Men

Vohkesehetaneo’o - Kit Fox Men

Hotovano’axeo’o - Buffalo Bull Warriors

Hotamemasehao’o - Crazy Dogs

Monesoonetano’o - Flint Men

Hohnohkao’o - Contraries

Hema’tanoehoe’o - Bow String Men

CHEYENNE GOVERNING BODIES

The Cheyenne may have evolved from three related tribes: the Heviqs-nipahis, the Sutaio, and the Masikota. These Tribes, over a long period of time, unified themselves to form the Tsé-tsêhéstâhese or the “People.”¹² The tribe then divided itself into ten divisions, or bands:

- Wotápio (Wu'tapiu). Southern Band Eaters. Possibly from the Lakota word wotapi, meaning to eat. Omísis (*Ôhmésêheseo*) Eaters or Northern Eaters
- Oivimána (*Oéve mana*) (O' eve-manaho). Northern Band Scabby People
- Hisíometanio (*Hesé'omeétaneo'o*). Northern Band(?). Ridge Men or Ridge People. Old Little Wolf's band
- Hovooohnova'ha-taneo'o. Poor People Band
- Oqtóguna (*O'xestoo'ona-taneo'o*). Broken Jaw People
- Hónowa (*Háovôhnóva*) (*Hee'vaha-taneo'o*). Hair Robe Men or Hair Robe People
- Heviqs-nipahis (*Iivsts'tsi ni'h pah*). Aorta Band(?)
- Hévhaitanio (*Heévâhetaneo'o*) (Hotame'-taneo'o). Dog Men or Dog Soldiers
- Masikota (*Mah sih'kota*). Northern Band; Flexed Leg People; Morning Stars People

Sutáio (*Só'taeo'o*) Band. A listing of sub-bands of the Sutáio Band follows:

1. Northern
2. Northern – Box Elders Band
3. Southern
4. Southern – Black Shins Band
5. Southern – Bull Chips Band
6. Southern – Grey Beards Band

The Cheyenne Tribe maintains the Council of 44 today. During the devastating years of separation, when it was impossible for the Cheyenne to gather as they had in the past, the Northern Cheyenne made an adaptation to reestablish the Council of 44 in the North. There are very few references regarding this change. It is noted in many sources that the Northern version of the Council rejected the negotiations and participation in the Treaty of Fort Laramie 1868 with the Northern Cheyenne and the Northern Arapaho.

1825 TREATY WITH THE CHEYENNE

In 1825, the Cheyenne signed their first treaty. At that time, the Cheyenne lived at the confluence of the Cheyenne River and the Missouri River. They had recently come to the area after living in earth lodges about 100 miles north on the Missouri River. The treaty commissioners contacted the Cheyenne through a Lakota tribe that lived close to them. The

first meeting was brief, and the Cheyenne representative returned the proposal to the Council of 44 for discussion and approval. The Council of 44 agreed with the proposal, and several members of the tribe returned to sign the treaty. The treaty allowed immigrants to move across Cheyenne territory and not be disturbed.

CHIEFS

Sho-e-mow-e-to-chaw-ca-we-wah-ca-to-we (Wolf with the High Back)

We-che-gal-la (Little Moon)

Ta-ton-ca-pa (Buffalo Head)

Ja-pu (One Who Walks Against the Other Warriors)

OTHER WARRIORS

Ta-te-che-sca (White Deer)

Chah-pac-pah (One Who Raises His War Club)

Ta-ton-ca-hoo-oh-ca-la-eh-ch-pa-ha (Pile of Buffalo Bones)

Ma-te-wash-e-na (Running Wolf)

Shong-ge-mon-e-to (Wolf)

Nah-pa-ton-ca (Big Hand)

Oh-kee-che-ta (Soldier)

Tah-hi-o-ta (Lousy Man)

This treaty's unusual feature is that the Cheyenne names appear as Lakota names. At least one Cheyenne representative of the Council of 44 visited the treaty meeting and took the request back to the rest of the people and the Council of 44 for approval. When this representative returned, there was no Cheyenne interpreter, and a Lakota who spoke Cheyenne gave the commissioners the chiefs' names in Lakota.¹³

A NEW TREATY

Around 1845, the Cheyenne began experiencing pressure from trespassers. The problem increased when gold was discovered in California. By 1849, the rush of illegal immigrants was destroying the buffalo herds. The region's volatility was at an all-time high as the *legal occupants* tried to keep the peace. This was difficult as the invaders, who came in droves, believed Indians were in the way and needed to be removed. In the autumn of 1850, St. Louis newspapers announced a conference to negotiate access through American Indian lands for westward-bound emigrants. Colonel David Mitchell and Indian agent Thomas Fitzpatrick had advocated for a new treaty for several years. Now, they had the appropriations and permission from Congress to proceed with their plans. The following is a description of the activities:

After smoking the peace pipe, Mitchell opened the council. “We do not come to you as traders,” he said. “We do not want your land, horses, robes, nor anything you have; but we come to advise with you, & to make a treaty with you for your own good.” He then promised the tribes compensation for 50 years, in part for allowing “the right of free passage for [the Great Father’s] White Children’ over the increasingly popular emigrant trails.

The government wanted to establish tribal territories so that the tribes’ Great Fathers could “punish the guilty and reward the good’ for any future depredations. These divisions, Mitchell assured the tribes, were “not intended to take any of your lands away...or to destroy your rights to hunt, or fish, or pass over the country, as heretofore.” Instead, he explained that the boundaries would bring peace, & he emphasized again that the tribes would be well compensated. Mitchell then asked each tribe to designate a single chief and one or two tribal members to be feted (decorated) in Washington, D.C.—a longstanding government practice with tribal representatives. He encouraged the tribes to take the next two days to “think, talk and smoke over’ the proposals.¹⁴

TREATY OF FORT LARAMIE 1851

The Treaty of Fort Laramie 1851 (for this section, referred to as “Treaty”) was a serious enigma for all the Indian Nations that participated. Mitchell and Fitzpatrick made a serious error when they believed that the Medicine Chief of the Cheyenne could represent all of the Cheyenne in the treaty process. The issue of representation by a single leader (following the U.S. model) was foreign to most of the Nations. The following is an overview of the Treaty’s articles that created significant issues:

Article 3. In consideration of the rights and privileges..., the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty.

The article creates an extrajudicial level of protection for Indian people if trespassers illegally occupy land within the treaty boundaries. The government was legally bound to remove all trespassers and compensate the Cheyenne for the illegal activity. However, unlike the Indian Trade and Intercourse Act of 1834, there are no specific actions that the United States should take to protect Indian people against those trespassers, squatters, or illegal immigrants. When the issue of illegal occupancy was raised, the 1834 Trade and Intercourse Act was used to prescribe the action(s) required of the United States government for the removal of people

illegally occupying Indian land. The government was supposed to remove illegal occupants and fine them \$500 to \$1,000. Such significant treaty violations were not enforced (or went unenforced), and this caused major economic harm for the Cheyenne.

Article 4. The aforesaid Indian nations do hereby agree and bind themselves to make restitution and satisfaction for any wrongdoings committed, after the ratification of this treaty, to any band or individual of their people, on the people of the United States, whilst *lawfully residing* in or passing through their respective territories (emphasis mine).

Article 4 violates the Indian Trade and Intercourse Act of 1834. No provisions or exemptions exist for “*lawfully residing*” within that Act, and any occupancy by trespassers was a violation.¹⁵

Article 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories...¹⁶

The problem with this article is that it is contrary to all concepts of sovereignty. You cannot force multiple nations to occupy the same territory. For example, the Gros Ventre, Mandan, and Arikara Nations’ territories were all assigned to one area, with multiple tribes having occupational rights. The creators of the Treaty repeated the violation with the Cheyenne and Arapaho by assigning them to one area of the country. At no time during the proceedings of the Treaty of 1851 were there discussions or comments that these nations would be required to be unified or act as one nation. There is no definitive distinction between the Cheyenne land and the Arapaho land. This was a significant violation of the sovereign right of a Nation to determine the boundaries of its land. In addition, it led to future confusion about identifying and treating these two tribes as distinct Nations.

The last statement in Article 5 reads:

It is, however, understood that, in making this recognition an acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims that they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.¹⁷

This section of Article 5 preserved the unrestricted rights of Indian Nations to move across these lands and hunt and fish in their traditional areas. Unless a later treaty abrogated the right to them, these rights still exist. This is especially true for the Northern Cheyenne, many of whom argue they never signed a treaty; there are also many others who make and support the same point—the Cheyenne never signed a treaty. What is perfectly clear is the Indian Claims Commission (“ICC”), established by Congress in 1946, erred by stipulating the 1851 Treaty was the grounds for the claim, as the Treaty was never ratified and should not have been used as a basis for the claim. (We will be revisiting the history of and the issues surrounding Indian claims extensively in a later report.)

Article 6. The parties to the second part of this treaty having selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.

This article is another example of one sovereign entity overstepping its authority by directing and selecting the leaders from other sovereign Nations. This severely restricts and subverts the rights of Tribal Nations to select their leaders and follow their traditional governance structures.

Article 8. It is understood and agreed that should any of the Indian nations, parties to this treaty, violate any of the provisions thereof, the United States may withhold the whole or a portion of the annuities mentioned in the preceding article from the nation so offending, until, in the opinion of the President United States, proper satisfaction shall have been made.

Firstly, Article 8 is vague and creates an illegal process for dealing with treaty violations. There is no due process, there are no courts to cure any actions, and it violates the Native Nation’s sovereignty by imposing another sovereign’s ability to adjudicate the rights of Native Nations. Secondly, not determining the individuals responsible for a violation and instead holding an entire nation responsible for the actions of one of its individuals or subgroups is ludicrous and questionable in any legal sense. (*Note: I intentionally listed Article 8 out of order because of the significance of Article 7.*)

The enigma of the Fort Laramie treaty was the troublesome and controversial amendment of Article 7.

Article 7. In consideration of the treaty stipulations, and for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, and

for their maintenance and the improvement of their moral and social customs (emphasis mine), the United States bind themselves to deliver to the said Indian nations the sum of fifty thousand dollars per annum for the term of ten years, with the right to continue the same at the discretion of the President of the United States for a period not exceeding five years thereafter, in provisions, merchandise, domestic animals, and agricultural implements, in such proportions as may be deemed best adapted to their condition by the President of the United States, to be distributed in proportion to the population of the aforesaid Indian nations.

It is important to note that the following language in this article, “*for their maintenance and the improvement of their moral and social customs,*” is controversial. How can one sovereign include language such as the above without recognizing the insult of such a statement? The inclusion of such awkwardness and arrogance demonstrates the impossible position the Native People of the day had to deal with in grave matters. These words alone should have rendered the treaty invalid.

The treaty was ratified by the Senate on September 17, 1851, and forwarded to President Millard Fillmore on February 17th, 1852. He refused to sign it because there was no proof that the treaty had been returned to the Indians for approval of the amendment. From the very beginning, this treaty was filled with controversy. Mitchell believed the only way to civilize the Indians was to change the Indian from a hunter into a farmer. He believed that a 50-year payment period in the treaty would provide a long enough time to achieve the goal of civilizing the Indians. The Senate thought \$2.5 million over 50 years was too much to pay for a treaty in which no land was ceded. The Senate hoped the “civilizing” process would take effect sooner and changed the term to 10 years with the right at the discretion of the president of the United States to add another five years thereafter. The \$50,000 per annum was expected to be sufficient to help move Indians into a “civilized” state where they were not relying on the land to survive. On May 24th, the Senate unilaterally struck out the 50-year time provision.

In his book *American Indian Treaties: The History of a Political Anomaly*, historian Francis Paul Prucha describes the Treaty of Fort Laramie 1851 “as the most notorious and complicated case of seeking Indian assent to a substantial change made in a treaty. It shows how haphazard the treatment of a treaty could be and how convoluted the process of formal promulgation” (see quote in full below). The Senate unilaterally reduced the annuity payments in the treaty from 50 years to 10 years, and the process of getting the Indians to approve the change was indeed convoluted:

The most notorious and complicated case of seeking Indian assent to a substantial change made in a treaty by the Senate was that of the Treaty of Fort Laramie of 1851. It shows how haphazard the treatment of a treaty could be and how convoluted the process of formal promulgation. After the Senate reduced

the annuity payments promised in the treaty from fifty years to ten years (with an additional five years at the discretion of the president), the process of getting the Indians to approve the drastic change began.¹⁸

Many people were confused and angry about unilaterally altering the Treaty. Commissioner of Indian Affairs Luke Lea strongly rejected the suggestion that it was unnecessary to obtain such Indian consent. As quoted elsewhere in this report, Lea wrote to A.H.H. Stuart, arguing:

A treaty is a contract. The word has a definite and well-understood meaning. Ex vi termini it imports the idea of an agreement, and necessarily implies mutuality of assent... How then can that be considered a contract, a treaty which contains provisions prescribed arbitrarily by one of the parties without even the knowledge of the other?... I am aware that there are several instances in which Indian treaties have been amended and promulgated as duly ratified without submitting them to the Indians for approval, but how such a proceeding in view of the legal principles involved, can be considered anything but a mockery of the highest and most solemn form of contract it is difficult to perceive.¹⁹

The Indian agents were required to get tribal approval for the changes, and three Nations signed the agreements. None of the others signed. Throughout the process and over the next few years, confusion reigned. The confusion is well documented. For example, one of the treaty copies in the Indian Office file has an endorsement that reads: “This [amendment] was to be submitted to the Indians, but they never got together for the purpose.”²⁰

Prucha notes, “When the treaties from the 1850s were printed in the United States Statutes at Large in 1867, the Fort Laramie Treaty was omitted with an explanatory note that said in part the assent of all the tribes [to the amendment] has not been obtained and consequently although Congress appropriated money for the fulfillment of its obligations, it is not yet in proper form for publication.”²¹

Charles Kappler added to the confusion when, in 1904, he erred in his work on producing a record of all the treaties by printing an amended treaty with a footnote stating this treaty was signed and ratified by the Senate. The amendment claimed that all of the Nations had agreed to the altered section of Article 7 (changing the payment of annuities period from 50 years to 10 years), subject to the acceptance of the amendment by all the Nations except the Crow. In 1929, Kappler admitted his mistake and stated that the Indian Service and the Department of Interior (“DOI”) neglected to advise the secretary of state that the Indian Nations did not agree to the altered Treaty.²²

For the Cheyenne, only four of the original six signatures appear on the revised Treaty amendment. For the Arapaho, only two of the original three signatures appear on the amended document.²³ Without the signature of the president, it was clear that the Treaty had not been formally promulgated.

Ironically, in the 1920s, the DOI made another attempt to get the treaty proclaimed. The DOI sent a copy of the Treaty with the three amended agreements to the State Department, requesting that the president sign the Treaty. Secretary of State Francis Kellogg rejected the proposal. The Act of 1871, which ended treaty-making and crushed Indian Sovereignty, prohibited the United States and the president from approving the Treaty. The president argued that without the proof of the signatures of the Tribes, the Treaty would remain unratified.

The story does not end there. In a footnote in Prucha's work, *American Indian Treaties: The History of a Political Anomaly*, on page 442, he shares how the U.S. government cannot be trusted:

There was considerable argument about whether or not a formal proclamation by the president was necessary for the validity of a treaty.... A legal opinion cited the Supreme Court decision of April 11th, 1898, in *New York Indians v. the United States*, 170, U.S. 23, in which the court decided that a proviso added to the Treaty of Buffalo Creek of 1838 was not present in the treaty as proclaimed by the president and was therefore unratified and not operative. The Indian office in 1928 was apparently unaware of the two decisions of the United States Court of Claims that had declared that the ratification by the president was not necessary for the validity of the Fort Laramie treaty. In the case, *Roy v. United States and Oglala and Cheyenne Indians* (1910) the court affirmed the validity of the treaty. It could find no provision in the Constitution or subsequent laws that required proclamation by the president. "Certainly," the court said, "as to Indian treaties, the contention that proclamation is necessary to give them binding force as between parties is without reason. The Indians were our wards, and we thus occupied a fiduciary relationship to them. The Sioux signed the treaty in the 1st instance, and when ratified and amended by the Senate, they agreed to it as amended. (Not true, according to this report's author.) They afterward received annuities under it and the rights the lands described, and it was repeatedly recognized.... To now hold that treaty never had any binding force to the United States or its citizens would be contrary to good faith and common honesty." A somewhat similar decision but of less general applicability was *Moore v. United States and the Sioux and Cheyenne* (1897).²⁴

All of this causes great consternation when you realize that the federal government sometimes did not even know what they were doing. In the 19th-century land cession work of Charles Royce, there is a footnote that indicates the "Treaty of Fort Laramie was never ratified."²⁵

Reviewing these documents shows us that the United States government did not consistently follow its own rules. The Court of Claims made a significant error when determining

the Treaty was ratified by the aberrant use of plenary power. The simple fact that the United States government was entering into a Treaty with another sovereign power was ignored. For the Court of Claims to apply a faulty standard of diminished sovereignty is an egregious blunder. The reality of this opinion is that these tribes who negotiated and signed the Fort Laramie Treaty of 1851 were operating as fully sovereign Nations and were not subordinate to the United States government, nor were they “wards of the government” at the time this change was made in the Fort Laramie Treaty of 1851.

The confusion concerning ratification continues even today. Many legal scholars and Indians believe the Treaty of Fort Laramie 1851 was ratified. The confusion was present in the Indian Claims Commission when the ICC used the unratified Treaty of 1851 as the stipulated document for the claims it was adjudicating.²⁶

Please see the notes from Francis Paul Prucha on the Fort Laramie Treaty of 1851, attached as an addendum.

THE TREATY SIGNED

The Chiefs agreed to Mitchell’s terms, even accepting a definition of the tribal land boundaries. Under the treaty, the United States government recognized the land between the North Platte and Arkansas as the country of the Cheyenne and Arapaho. This gesture meant little to the Cheyenne and the Arapaho, and only the whites understood the reasons for the carefully defined boundaries. Even the treaty language recognized that the tribes had not abandoned their rights and claims to other lands. They had given up no land. They had not agreed to restrict their movements in any way. They made no major concessions. As they looked at the mountain of gifts and promises of more to come for 50 years, they seemed to outfox the white tricksters.²⁷

The following people may have signed the treaty:

- Stone Forehead, a chief of the Heviqsnipahis, as well as the chosen spokesman of the Cheyenne.
- Whiteface Bull, an Oivimana chief.
- White Antelope, an Isiometannui council chief; and
- Bear Feather, an aged chief of the Wutapiu.

They made their marks, finding all of the people with the pledge of the arrow keeper himself. An important note is that all the Chiefs who signed were Southerners, representing only four *Manhao* (what the Cheyenne called themselves) out of ten. It is important to note that the Northern Bands of the Cheyenne may have agreed to the treaty, but none of the bands’ chiefs signed the document.

In signing the treaty, the Indians also recognized the rights of the United States government to establish roads and military posts in their territories and promised to make restitution for depredations committed against whites passing through their territories. In return, the government agreed to protect the Indians against depredations committed by whites, and to pay annuities of \$50,000 per year for 50 years. A former Commissioner of Indian Affairs suggested payment was to be made in provisions, merchandise, domesticated animals, and agricultural implements as deemed best by the president of the United States. This is an example of the growing practice by the U.S. government of undue forced assimilation and should not have been included in the treaty.

AFTERTHOUGHT

The Treaty of Fort Laramie 1851 is a perfect historical example of the inadequate discourse between the Americans and the Indians of the Plains. At the time, however, the Treaty of Fort Laramie seemed to cement the friendly relationships between the United States and the Cheyenne and Arapaho even more strongly. Following the treaty negotiations, three Cheyenne—Light on a Cloud, White Antelope, and Little Chief—and three Arapaho—Friday, Eagles Head, and Storm—visited Washington. They returned with strange stories of American ways.

Commissioners Mitchell and Fitzpatrick, the advocates for a new treaty with the Plains Indians, had what they wanted as well. Almost all the benefits accrued to the federal government as a result of the treaty were legal technicalities that could be used later to justify dispossession. The government could now ignore even the watered-down land claims of all the tribes save the particular ones assigned to each area outlined in the Treaty. The government could manipulate annuities, and they did. The government could ignore tribal structure in dealing with the various tribes because of its insistence at Laramie that each tribe choose one spokesman. When the tribes complied with this request, they set a dangerous precedent that allowed the government to hold entire tribes responsible for the actions of a few—or even one. Once the practice was validated, the government used it repeatedly without bothering to ensure that the chiefs who signed subsequent treaties were truly speaking the will of the tribes.

AN UNREPORTED INCIDENT AT THE 1851 FORT LARAMIE TREATY COUNCIL

The following is an unreported story that happened during the treaty process. Before the gathering, a group of Shoshoni on their way to participate in the treaty were attacked by Cheyenne warriors, and two Shoshoni were killed. Col. A.B. Chambers, the editor of the *Missouri Republican* and secretary for the Peace Commission, went to Fort Laramie to report on the “Great Council Treaty” and sent back dispatches to be published in his paper. B. Gatz Brown, one of his

writers, accompanied Chambers. The following are excerpts from the *Missouri Republican*:
A “Scalp Peace” Between the Cheyenne and Shoshone, or (at this time in history, they were called the Snakes).

These tribes have been deadly enemies, and recent causes had been given by the Cheyenne for the Snakes to distrust and hate them. The Cheyenne are bold, warlike people, and they have amongst them a due portion of bad men. While the Shoshones were traveling to the peace commission, they were attacked by a group of Cheyenne, and a father and a son were killed and scalped.

It was to settle this and other difficulties that a meeting was held today. Soon after the breaking up of the council, the Snakes marched up to the Cheyenne village [.....] distance of about a mile.

In the afternoon, about 100 of the soldiers of the Cheyenne came into camp. These soldiers are the young men of the nation. They formed into companies, with a head or principal leader and other subordinate officers, and in organization and purpose, resemble our volunteers. The principal head is usually well a known (sic) brave, and when the nation traveling or hunting, they constitute the guard and scouts for the rest of the nation. They form the war parties and often go to war upon their own hook, sometimes without the knowledge of the consent of the chiefs. They are so numerous and so well banded together that the chiefs can do nothing with them.

In this case, about one-third of them were mounted on horseback—the others were on foot—and the 1st intimation we had of their approach was their shouts and yells as they came over the plains from the Cheyenne village. They came as a war party; their horses were all painted in the most approved style—their manes and tails and various colors; and on the hips and shoulders, the rider had painted his coups. This coup is a history of the feats which the Indian has performed. Every scalp he may have taken, or an enemy he has slain is represented by a hand or another symbol painted on his horse. Stealing horses is a great feat, and every horse that he has stolen is marked by an emblem somewhat resembling a horse’s hoof.

All the Indians were painted in their war costume, dressed in the best possible manner, armed, some with guns, some with lances, and others with bows and arrows. The horseman and the footman apparently mingled in a confused mass, but later it could be seen that there was order. In all their movements, they would fire their guns, shoot arrows, give a shout, make a charge, and then the horseman from the center would rush out around and throw the footman, indicating the manner of protecting their men when too closely pressed. These exhi-

bitions of the wild and savage mode of warfare are exciting beyond description.

Upon arriving there, they were seated in an arbor, formed of a number of lodge skins and poles, forming a semicircle, about half open to the east. Around the sides, skins and mats have been placed for the Snakes and the whites to sit upon. The guests occupied about half of the circle, and the remainder was occupied by the Cheyenne. On one side was the Cheyenne chief's; a no finer specimen of men can be found anywhere; on the other side set a large company of soldiers (young men) several rows deep. These men seem to be physically better developed and have more expression and manifest more intelligence than most of the other Indians. A considerable time elapsed before the ceremonies commenced.

This interval was occupied in smoking, but no conversation took place between the Indians. At length, the Porcupine Bear came in and made a speech to his own people, principally to his young men, urging them to treat the Snakes as friends—to smoke with him, take them by the hand, and give them presents. He was particularly forcible, judging from his gestures and the translation of the speech by the interpreter. He urged the young man to listen to the council and advice of the old men and, in the future, never to go to war or do any other act without the permission of the chiefs. After a while, the old man outside commenced to harangue the village, and soon they began to collect from all quarters.

A large copper kettle was now brought in, nearly filled with cracked or smashed corn, which had been well boiled. This was served out to the Snakes in tin pans and kettles, and to the Cheyenne chiefs, one basin full was given, from which they ate one after another. The ladle, made from the horn of a big horn sheep, was filled and passed around to the whites.

It is credible to say that they (the Snakes) will not eat dogs, and in the intercourse with the Cheyenne and the Sioux, they made it a standing condition that they should not be offered a dog feast. This feast over, several speeches were made by Cheyenne chiefs to their own people. Then a number of presents of various kinds were made by the Cheyenne to the Snakes. All the Indians have a particular way of performing this offer. When an Indian makes a present, he does not go up and give it himself but comes into view, designates the person to whom it is given, and is delivered by his favorite [s.....] or child. The Indian receiving it manifests his thanks either by throwing his arms around the shoulders of the bearer or raising both hands to her shoulders and drawing them down to his own heart.

This done, we again had a number of speeches from Cheyenne's chiefs and

warriors haranguing their people to behave themselves and make friends with the Snakes. The day was now far advanced, and the scalps had not been brought in, and I began to think that they would not be. But in due time, the old man began outside the arbor to harangue the village—they commenced beating the drum, and in a little while, they were surrounded by more Indian men, women, children, and dogs than I suppose the village could turn out. At length, six or seven Cheyenne entered with blankets, bolts of red and scarlet cloth, knives, tobacco, and other articles, which they deposited in the center, opened, and prepared to deliver.

After the lapse of a short interval, another shout and song announced the approach of a second party. With this party came the man who had taken the scalps before the before (sic) alluded to. A brother of the Indian killed sat between the two principal chiefs of the Snakes at the head of the circle. The scalps were presented to him; they had been dried and prepared after the Indian fashion, but he was assured that “the scalps had not been danced.” This consists of the succession of dances, which are kept up for weeks, in which the [s.....] participate.

The presents were then brought in and delivered to the brother, who distributed them to a portion of the [Shoshone/Snakes] Tribe. The brother looked quite sorrowful, and upon receiving the scalps, he evinced deep emotion, but when the goods were presented, his countenance changed; he embraced the murderers of his relatives—a general whoop went up, followed by numerous interchanges of friendships speeches and a general giving of presents. Amid this wild revelry, I left them. That night they came to the Snake lodges near our tents and made the night horrible with their dances and songs.²⁸

CONTINUED LAND ACQUISITION EFFORTS

During this time, the United States Congress continued attacking Indian land ownership. For example, the Kansas Territory encompassed the entire front range and eastern plains of Colorado. However, they had no legal right to claim any of this land. Mark the language in the Kansas-Nebraska Act of 1854, which should have served as a protectorate clause for Indians:

Kansas-Nebraska Act 1854

Provided further, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory so long as such rights shall remain unextinguished by treaty between

the United States and such Indians, or include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial line or jurisdiction of any State or Territory. Still, all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Nebraska until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska. Or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 37. And be it further enacted, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act shall be faithfully and rigidly observed, notwithstanding anything contained in this act; and that the existing agencies and superintendence's (sic) of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at its discretion, change the location of the office of the superintendent.

In the next few years, the Cheyenne Nation was constantly harassed by the military, illegal immigrants, and squatters who invaded their territory. One of the most outrageous attacks by the U.S. military resulted from a misunderstanding following the "Mormon cow incident."²⁹

As immigrants flooded the Platte River route, the tensions between the [Sioux] and the Americans [invaders] escalated. The Cheyenne and Arapaho were caught in the middle of a severe conflict. In the summer of 1854, the fragile peace cracked when a dispute over an immigrant's cow resulted in a confrontation near Laramie. Lieutenant John Grattan's small force was wiped out when he opened fire on a party of Brule Sioux, killing one of their chiefs in the melee. The chief killed was Conquering Bear, who was coerced into signing the Treaty of 1851 as the Lakota representative. This senseless affair undermined the peace and angered the Cheyenne, who saw it as a sign of bad faith. Later that same summer, when the Northern Chiefs met with John Whitfield, the agent at Laramie, the Cheyenne were more forceful than polite. They insisted that their annuities be paid in guns and ammunition. They demanded that the government pay the Cheyenne \$4,000 in the following year. Yet, even in their belligerence, they attempted again to appease the whites.

Nonetheless, they appealed for help to adjust to the intruders in a way that shocked their agents, demanding, "We want 1,000 white wives, one for each chief, to teach our children and us this new way of life that must be lived when the Buffalo was gone." Obviously, this was a

joke that was not understood by the military.³⁰

Over the next year, there was little peace on the plains. The older peace Chiefs did their best to keep the Young Warriors from committing significant violations of the peace agreement. However, the United States military struck the Cheyenne camp and killed ten people. The Cheyenne retaliated in kind, and the total number of whites killed was 18. By September, the depredations had ceased. In the fall, Indian agent Thomas Twiss, who was considered too friendly with the Indians and was married to a Lakota woman, came to terms with the Cheyenne, and the problem seemed to be over. The Army, however, was not pleased with Twiss's conciliatory activities. On April 10th, 1857, Secretary of War John B. Floyd, in office for only a month, ordered a punitive expedition against the Cheyenne and the Kiowa. Floyd's order was both foolish and unwarranted. In taking a belligerent position, he not only negated the successful work of another government office, thereby making the government seem treacherous to Indians, but he also endangered the life of every illegal immigrant crossing the plains. This made the military even angrier, and they responded with and continued the extermination policy against Indians. In the summer of 1857, an expedition under Colonel Edwin V. Sumner waged war against the Cheyenne. Although the Cheyenne were prepared, the outcome was a disaster for them.

The following is the actual account of the military aggression toward the Cheyenne, as reported by William Chalfant.

***An Expedition Against the Cheyenne
A Punitive Expedition is Ordered***

The concept of a large-scale military operation against the Cheyenne's (sic) originated in the 1855 report by their agent, John W. Whitfield, who found Cheyenne and other plains Indians of his agency in need of a "sound chastisement" to ensure what he considered proper behavior. Following the treaty of Fort Pierre in early March 1856, Colonel William S. Harney, dissatisfied with a lack of humility on the part of the Cheyenne and believing that they deserved some of the same treatment he had given the Sioux, recommended that an expedition be sent against them in the Spring.

The order from the War Department was issued on October 24th, 1856, eight days following the successful conclusion of the peace council with Thomas S. Twiss, agent for the upper Platte. The white captives had, for the most part, been released. The only property of consequence taken by the Cheyenne were a few horses and mules. The punishment to be administered was for the activities occurring in the preceding two years (previously settled and forgiven by treaty). And for which the army bore substantial responsibility for its harsh and indiscriminate treatment of Indians. It was the accumulation of years of misunder-

standing and mistrust and was grounded on the belief that a whole people should be responsible for the actions of a few, that Indians had no right to move freely through their own lands or hold whites accountable for wanton acts committed by them; and that the appropriate punishment for harm done to the person or the property of the whites was to kill Indians, any Indians, regardless of their culpability. It was the policy that would persist until well after the Battle of the Little Big Horn, until 1890, in a place called Wounded Knee.³¹

Sumner's victory had a severe impact on the Cheyenne.³² The power of their medicine was altered by fate, and their future was in danger. The Northern bands of Cheyenne headed north to the safety of their secluded ranges of the Powder River. The Southern Cheyenne were trapped directly in the path of brutal, aggressive white expansionists. This caused the Southern People's leaders to think about ways they could continue to exist peacefully.

In October, High Back Wolf, the Sweet Medicine Chief of all the Cheyenne, led a delegation of Council Chiefs, including White Antelope, Tall Bull, and Lean Bear, to Bent's Fort. They complained about the treatment they received from the military, and they insisted that they tried to honor the Treaty of Fort Laramie. These conversations led to a discussion about another new treaty. The Southern leaders were agreeable to a new treaty as long as they could keep their lands and would not have to continually deal with the savage intruders.

Unfortunately, gold was discovered in 1858 in Colorado, and everything changed for the Cheyenne. The mass invasion of the Cheyenne territory violated the 1851 Treaty of Fort Laramie and the Indian Trade and Intercourse Act of 1834, leaving the Cheyenne people dismayed. It has been estimated that up to 100,000 people invaded the Front Range of Colorado in search of gold in just three years. Every one of these individuals was illegally intruding on Indian land. The United States government failed to follow the law created in the 1834 Indian Trade and Intercourse Act. During the next two years, government officials, including the Commissioner of Indian Affairs, Alfred B. (A.B.) Greenwood, conspired to relocate the Cheyenne and Arapaho People to a small desolate tract of land in southeastern Colorado.

The Southern Chiefs had spoken but would not propose a separate peace without regard to their Northern relatives. The distances between Arkansas and the South Platte and the Northern bands' territories made communications nearly impossible, forcing the groups to act independently on many questions. To compound that problem, the United States government created separate agencies for the Cheyenne and Arapaho in the north and those in the south. This created the flawed notion that these two groups were independent of each other for governing purposes.

THE INIQUITOUS TREATY OF FORT WISE 1861

A.B. Greenwood, Commissioner of Indian Affairs in 1861, had sent word out with messengers asking the Cheyenne and Arapaho to come to a treaty meeting. Commissioner Greenwood made several severe mistakes in the early plans for the latest treaty. In his message to the tribes, he told them they would sign a peace agreement and give up significant portions of their land. Greenwood gathered a small group of representatives from the Southern Bands of Cheyenne and Arapaho, including Black Kettle, White Antelope, Left Hand, Little Raven, Storm, and Shaved Head. Greenwood explained the treaty and described the location of the new reservation. The Southern Arapaho called this area “no-water land.” There was another problem with the proposed land. The War Department had already appropriated twenty-five miles of this land as a military reserve. Despite Greenwood’s best efforts, the Northern Indian leaders refused to agree to a treaty.³³

Immediately upon learning about the treaty, the Cheyenne called a meeting of the Council of 44 to evaluate the request. After a lengthy discussion that included the societies, the Cheyenne responded that they would not attend a treaty meeting and had NO intentions of giving up any of their lands.³⁴

When Indian Commissioner Greenwood learned of the objection of the Cheyenne, his response was, “We will make this Treaty over the Heads of the Cheyenne.”³⁵ One of the significant obstacles the Commissioner failed to comprehend was that he thought he was making a treaty with “the Cheyenne and Arapaho of the Upper Arkansas River—the Southern Tribes”; but the chiefs insisted that the Northern Arapaho and Cheyenne needed to be asked if they wanted to sign this treaty. And, if not, they could negotiate their own treaty.³⁶

At this point, the only person who knew the Cheyenne well was William Bent, a long-time Indian agent who was so disgusted with the process that he resigned.³⁷

Once Greenwood realized the treaty meeting would fail, he went back to Washington and absolved himself of the fiasco. At a minimum, his response was a dereliction of duty, and he should have been prosecuted or at least lost his job.

When Greenwood left, he appointed Dr. F.B. Culver as the Indian agent. Culver had been hired to oversee the trinkets and gifts. He later filed a claim in the Court of Claims that he was not adequately compensated and won the case. He was awarded \$5,000 out of Indian money for his fraudulent claim.

In the meantime, William Gilpin, the Colorado Territorial Governor and Superintendent of Indian Affairs, appointed Albert G. Boone as the Upper Arkansas River Indian agent. To add to the considerable confusion, the new Indian Commissioner, William Dole, appointed Samuel G. Cooley, his cousin, to the same post as Boone. This is a perfect example of nepotism run amok.

Albert G. Boone did not have the experience or a history of working with Indians. Despite this, and acting as the agent in charge of the treaty process, he randomly appointed six Indians

to sign the new treaty]. This account of Boone's activities is from a narrative by George Bent in the book *Bent's Fort*, p. 371 [check page numbers in source—footnote says p. 346].³⁸ Two Cheyenne Peace Chiefs attended the meeting (Black Kettle and White Antelope). However, two years later, both chiefs denied they signed the Treaty. They were there *without* the permission of the Council of 44 and had no official authority to sign or approve any documents.³⁹

To compound the confusion, the interpreter for the Arapaho, crudely known as “Blackfoot (Lying John) Smith,” could not speak the Arapaho language. This single fact should legally invalidate the contract.⁴⁰

Certain parts of the treaty were modified at some point in the process. The original title of the Treaty was “Treaty with the Confederated Tribes of the Arapaho and Cheyenne.” The language is found in the original text of the Treaty, and it is not accurate. The words “Confederated Tribes” are inaccurate and create an illusion that these two Nations and numerous bands had agreed to be recognized as a “Confederation.” This was never true; the two Nations were allies, intermarried, and had very close relationships; however, there was never a meeting or agreement that these two Nations would be considered “Confederates.”

The use of “Confederacy” in the Treaty heading and twice in the body of the treaty is suspicious and out of place. Why would it have been included? Perhaps it was to elevate the status of the treaty because it was so weak and defining the tribes as “confederates” might enhance the status of the treaty. More likely, however, linking the treaty's language to the Civil War would cause the Senate to pay it greater attention. Thus, using a term such as “Confederates” would have heightened the treaty's standing and visibility.

ARTICLE 6 OF THE FORT WISE TREATY

The final treaty was an altered version of Greenwood's original proposal and contained a few of the suggestions the chiefs had offered at the earlier meeting. Nonetheless, the treaty was complex and would have been confusing to the average person of the day. The treaty was negotiated under duress. It had been prepared in advance and included several suspicious articles. One of the articles that the Tribes had expressly argued for was Article 6:

Article 6. The Arapahoes and Cheyennes of the Upper Arkansas, parties to this Agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for respecting their improvement and civilization, and, to that end, to induce all that are now separated to rejoin and reunite with them. It is therefore agreed that, as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages; and to induce them to come in and unite with their brethren; and to enable them to do so, and to sustain

themselves for a reasonable time thereafter, such assistance shall be provided for them, at the expense of the tribe as may be actually necessary for that purpose: Provided, however, That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty, shall not be entitled to the benefit of any of the stipulations.

The introduction in Article 6 at the beginning of the Treaty, “*Arapaho and Cheyenne Indians of the Upper Arkansas River, being duly authorized by said Tribes,*” made it clear that this treaty was **made with only the Southern Bands of Cheyenne and Arapaho** and without the signatures from the people of the North; the land North of the South Platte River could not be ceded. The article would soon become a significant issue for the Territory of Colorado. The article required that within a year, the Indian agent must get the signatures of all those bands who had not signed the treaty. The treaty’s language states that if the Northern bands did not sign within one year, they would not realize the “benefits” of the Treaty. The wording of this article was deceptive at best; the Cheyenne were not “benefiting” from the treaty. The Treaty had them giving up their best hunting grounds and 53 million acres of land for a small, desolate, bone-dry reservation. This could hardly be considered “benefiting.” This is another example of the deception used by the government.

Article 6 called for the Commissioner to notify the absent chiefs of the treaty benefits and to induce them to sign. Those who refused to sign within one year from the ratification date would lose all rights to the benefits. “This crucial article put the entire treaty in abeyance; it could not take effect until all the Arapaho and Cheyenne chiefs, northern and southern, had signed.”⁴¹

The mere fact that the signatures were needed was ignored by all of the principal U.S. government leaders. They knew that they needed the signatures, and in correspondence from Commissioner Dole to Territorial Governor Evans, who was also the Superintendent of Indian Affairs, Dole directed Evans to “take care of it.”⁴² The most damning evidence that everyone knew this was an issue is found in this report:

Report of the Commissioner of Indian Affairs 1862 Colorado Superintendency

Another disturbing element consists in the fact that one or two of the Bands were not represented at the making of the recent treaty with the Cheyenne and Arapahoes, who, consequently, still claim the right to roam throughout the territory once claimed by that Nation. Although provision is made by the treaty for bands, not parties thereof to become such, it is believed that their concurrence in the treaty can more easily be obtained by direct negotiations with them for that purpose.⁴³

THE LEGAL & POLITICAL HISTORY OF THE NORTHERN CHEYENNE

There is consistent evidence that the signatures needed for Article 6 were never secured. In fact, the reports indicate that only one signature was ever secured, and that person was drunk. The failure to get the signatures required in Article 6 was the most egregious shortcoming, as the U.S. took the land without ever recognizing they had no right to take or use it. Without the Northern Nations' consent, the land North of the South Platte was never ceded, and the failure to get the signatures for that land has caused the Treaty to be irreparable and incomplete in any reasonable person's review. Simply put, the land was taken illegally. An excellent review of the details of this illegal action can be found in the piece "Prelude to War," written by William Unrau for the fall 1964 issue of *The Colorado Magazine*.⁴⁴

The following is the narrative of the Bureau of Indian Affairs Commissioner Report of 1862:

In the 1861 treaty made with the Southern Cheyenne and the Arapaho tribes, Article 6 in the treaty called for the remaining Cheyenne and Arapaho to come in and accept it. The United States was unable to acquire a treaty of cession from the Northern Cheyenne and Northern Arapaho until 1868.⁴⁵ This reluctance on the part of the Northern bands and tribes is mentioned in the Commissioner of Indian Affairs report for 1862 which stated, "There never having been any boundary between the bands of Cheyenne and Arapaho on the plains, this treaty of the Upper Arkansas [1861] is imperfect and indefinite as to the extent of cession, unless these bands are induced to accept.... I would urge its immediate settlement by negotiation with the disaffected tribes who frequent the Platte River country, that the title to the unperfected portion of a Colorado territory may be perfected."⁴⁶

Officials of the United States understood they were dealing with two separate and distinct groups of Cheyennes and Arapahos in extinguishing the title to the land involved in the Treaty of 1861. This further demonstrated that the Indian department knew the land was not ceded when the commissioners, negotiating the 1865 treaty, informed the Southern Cheyenne and Arapaho that the treaty contained a provision to include the Northern People.

This confirms that the land north of the South Platte in Colorado, Wyoming, and Nebraska was taken without a negotiated treaty with the Northern Nations. The Indian Claims Commission (ICC) mentions that this land transaction was never perfected. The ICC suggests this happened in the Cheyenne Treaty of 1868 at Fort Laramie, but it is not clearly stated in that treaty and remains ambiguous.

ARTICLE 11

When the 1861 Treaty was introduced for the second time, the United States Government included Article 11. This should never have been in the treaty; the United States had no legal right to sell Indian land to a third party in a treaty negotiation. In addition, the people on this land were there illegally and should have been removed by the United States government.

ARTICLE 11: EVIDENCE OF CONSPIRACY

In consideration of the kind treatment of the Arapaho and Cheyenne by the citizens of Denver City and adjacent towns be permitted by the United States government to enter a sufficient quantity of land to include city and towns at the minimum price of one dollar and twenty-five cents per acre.

Indians would have never agreed to this article because of the hostility of those “kind” citizens of Denver. The reality was that just a few months before the Treaty, Left Hand and his warriors were absent from his camp in Denver; and a group of drunken, lawless white men invaded the Lodges, dragged out the women and young girls, and raped them. The leader of this villainous group was Charles Gardner, better known as “Big Phil the Cannibal,” an escapee from a Philadelphia prison. Even though Denver authorities and leaders knew who had committed this heinous crime, NOTHING was done to this gang of rapists.⁴⁷

Article 11 was eventually stricken from the Treaty by the Senate in the executive session. The removal was clearly unilateral, and therefore illegal. Six days after the Treaty was ratified, the Department of State⁴⁸ discovered a letter from the Commissioner of Indian Affairs that noted the Fort Wise Treaty had been altered, and Article 11 was removed. The Department of State directed Indian Commissioner Dole to get the signatures from the leaders who had signed the original document.

Investigating this matter has perhaps uncovered information which only hints that the process of securing signatures for the amended treaty was suspect. My comments about the lack of signatures are based on the general information about the anger from the remaining leadership of the tribes that condemned any commitment to the Fort Wise Treaty. Two years after the event, two Cheyenne leaders vowed they did not sign the treaty. With that knowledge, I assumed that it would have been implausible for the tribal leadership to be brought back together for another consultation and to agree to the treaty amendment. Part of my confusion is that there are two versions of the Fort Wise Treaty of 1861.

The following passage is from a consultation with Gary Roberts, one of the foremost experts on the history of Colorado:

Thanks so much for sending the Seward letter about Article 11 of the Treaty of Fort Wise. This is very interesting, and it caused me to do a little digging myself. You probably have this, but I am interested in your take on its meaning. In a file which contains the Seward letter, I found an additional document that includes Article XI, and additional information which indicates that following a meeting “in full council,” the Cheyennes and Arapahos approved the “amended” treaty on October 29, 1861.

The following is Dr. Roberts’s response after doing some additional research:

I am convinced that the chiefs who signed the Treaty of Fort Wise in good faith were devastated by the events that followed. Unfortunately, some of the evidence we have about their response is second and third-hand. For example, the statements supposedly from White Antelope that he and Black Kettle did not approve the amendments is from Elbridge Gerry’s account to Evans. We do know that Black Kettle refused to meet with Gerry, which gives us a pretty strong clue to his feelings on the matter of the treaty. I believe that when Evans began to press the idea that the Treaty of Fort Wise applied to all Cheyenne, wherever located, Black Kettle was infuriated.

It is clear that Black Kettle believed that the treaty of Fort Wise applied only to the manhao who were parties to the treaty. He not only believed that it did not bind the northerners but also, he believed that it did not apply to other Southerners who were not present at the negotiations. It is true that he argued for the Sand Creek reservation as a “safe haven” for the southerners, and that he made the case to the other southern manhaos’ leaders, most of whom were away from the Arkansas on the Solomon and Republican Rivers.

Black Kettle was firmly convinced that some accommodation needed to be reached with the whites in order to protect his people. Thom Hatch, in his biography of Black Kettle, explores his motivation, which was always for peaceful solutions to the threat of white expansion. When it was explained to him that the government intended to build a railroad through the heart of the Smoky Hill country, Black Kettle told the agents that no towns would be allowed along that route. His firmness in 1863 helped to rescue his reputation and standing among the Cheyenne. The agents—and I would include William Bent among them, though he was much more sympathetic to the Cheyenne and Arapahos than Boone, Culver, or Greenwood—never grasped the political systems of the tribes. Boone’s report in 1862 essentially said that the Indians had no concept of governance. The mishandling of the replacement of Boone with Colley, whom the Cheyenne and Arapahos never trusted, made the matter worse, especially

with Colley blindly following the stance that Governor Evans took about the consolidation of the tribes on the Sand Creek reserve.

I should mention that by September of 1861, a large number of Cheyenne, Arapahos, Comanches, and Kiowa (close to three thousand in total) gathered near Fort Wise/Lyon, demanding annuities. Governor Gilpin had instructed Boone to withhold annuities through the summer, fearing that if they were distributed, there would be little to carry the tribes through the winter. Despite the fact that Black Kettle told Boone that he and others would never sign another treaty, Thom Hatch says that Boone persuaded the Cheyenne to sign the amendment by promising them thirty-six military uniforms, including six (note the number of the latter) with epaulets and scheduling a visit to Washington to the chiefs. This at least provides an explanation for why so many Cheyenne and Arapaho people were at Fort Wise in September-October 1861. It had been a terrible summer, and the tribes desperately needed the annuities. Since Boone was also responsible for the Comanches and Kiowa, he was feeling considerable pressure. He would have promised about anything to reduce the pressure on him.

Remember too, that some of the chiefs—notably Yellow Wolf and Lone Bear—had long pushed for a closer relationship between the tribes and William Bent’s trading empire. In my presentation “Bent’s Fort and the Road to Sand Creek,” I discussed Yellow Wolf’s vision and the pressure he applied to Bent to move Bent’s Fort to Big Timbers. Bent’s “New Fort” was not at Big Timbers, but it was much closer. Unfortunately, both Yellow Wolf’s strategy to tie Bent’s interests to the Cheyenne, and Bent’s acquiescence to the plan as a profitable solution, eventually went awry. What was originally intended was corrupted by an influx of new traders, an alcohol epidemic, and a certain moral decline that followed. The Cheyennes saw the beginnings of the undermining of their traditional government and moral code. You will see in Boone’s reports his demand that something be done about the whiskey trade and its effect on the tribes. He was convinced that they could be more effectively controlled without the “whiskey traders’ corrupting the tribes. The Colorado gold rush had also increased migration on the Arkansas as well as the rush to the gold fields. This was part of the reason that Bent sought a treaty with the Cheyenne and Arapahos in the first place. So, it was a very volatile time that only got worse with the arrival of John Evans.

It is a fascinating and tragic story, intensified by the fact that nobody on the government side even thought to listen to the tribes about their governing system.⁴⁹

This is my suspicion about the amendment documents. There is evidence that the amendment document was altered. There are two places where someone erased and replaced dates. The handwritten documents show where changes were made.⁵⁰ Some reports suggest that the tribes gathered around October 8th, perhaps two weeks before and possibly sometime afterward. There is concrete evidence that the Arapaho were at Fort Wise on September 11, 1861.

News Article from the *Rocky Mountain News*, 09/11/1861

From Fort Wise.

A messenger arrived yesterday from Fort Wise with the report that there were several thousand Indians collected around the post and are becoming very clamorous for their annuities.

Many of them were suffering from hunger, and the commanding officer had already distributed some provisions among them. Some were threatening the fort, which is a feeble garrison.

A reinforcement of 2 companies of troops was expected at the ranch on the fourth yesterday. The rumors on the streets last evening that the Indians had given the post ten days to pay their annuities, or they would commence an attack were unfounded.

*Daily of Monday, September 9th.*⁵¹

It is improbable that all those who signed would have been around as late as October 29. They needed to be hunting to prepare for winter. We know they were starving and sorely needed the annuities, which could have been used to bribe or coerce them to sign. It is also highly unlikely that the signatures would have been in the exact same order as when they were made on February 19th. The original Treaty signed in February has X's by the signers' names and is possibly accurate. The amendment to the Treaty dated October 29 has plus (+) marks, not X's, and they all appear to be made by the same person, not by each individual signer. In addition, there is at least one place where the written document differs from the transcribed version. A handwriting expert could affirm the alterations.⁵²

Sen. James Nesmith of Oregon summarized:

We must remember that honesty was not a common trait among those who were interacting with tribes during this time. "If there is any one department of our government worse managed than another, it is that which relates to our Indian affairs. Mismanagement, bad faith, fraud, speculation, and downright robbery have been its great distinguishing features."⁵³

In 1872, Congress convened a special committee because of the continuing concern over fraud in the Indian department. It has been reported that the most significant fraud in Indian Country occurred in the 1860s.⁵⁴

The other argument concerning the validity of the amendment to the treaty deals with the procedural process used in the final construction of the document. The treaty was altered by the Senate when Article 11 was removed, and the Department of State then required new signatures from the original signers. There was a gathering where the Tribes had a chance, supposedly (reportedly by coercion through withholding annuities), to sign a second document. However, the proper procedure would have been to return the document, as amended, back to the Senate for approval or ratification, affirming acceptance of the amendment. This did not happen in any of the versions presented by historians. The details in the correspondence are as follows:

The Senate, at its last session, on the 6th August 1861, ratified the articles of agreement and convention between the U. States and the confederated tribes of Arapahoe and Cheyenne Indians, of the Upper Arkansas with an amendment thereto, which amendment has been assented to by the said Indians, in due form, and transmitted to this Department by the Commissioner of Indian Affairs. I have the honor to transmit, herewith, the treaty and amendment thereto, with a view to the proclamation of the same.⁵⁵

How did the Senate have the amendment and ratify it before the Tribes had even met in September? Should the proper procedure have been to return the “amended Treaty” back to the Senate for agreement on the amendment? Ironically, when President Lincoln signed the treaty, he reportedly said there was something wrong with the Treaty and that he would deal with Indian reform after the war. It is very difficult now to speculate on what exactly happened 150 years ago. However, when evidence is reviewed from a critical perspective, it can sometimes lead a common person, when given the facts, to conclude there could have been procedural issues and deceit based on the state of the Indian department during those years. My opinion is speculative and based on circumstantial evidence. Nonetheless, I remain convinced Article 11 and the amendment process were manipulated to make the approval mechanism appear perfect.

We must remember that at this time, Lincoln’s Indian Department was riddled with fraud. Note the message by Bishop Henry Whipple of Minnesota, where he made the following critique: “The Indian Department was the most corrupt in our government.” It was, Whipple said, “characterized by inefficiency and fraud.”⁵⁶

Despite not having perfected title to certain lands within the boundaries of the Treaty of Fort Laramie 1851 and in complete disregard of the Indian Trade and Intercourse Act of 1834, the U.S. Congress took adverse action to supposedly cure the illegal land transactions.

The following is a description of what happened to the land that was taken illegally:

THE CONGRESSIONAL GRANT OF 1864

Denver was founded in 1858. Both the Auraria Town Company (west of Cherry Creek) and the Denver City Town Company (east of Cherry Creek) platted out their respective streets and blocks and sold lots to prospective homeowners and business owners looking to settle and build in the fledgling community. One big problem: neither town company had title to the land they were selling. The solution was the Congressional Grant of 1864, which conveyed to Denver (and those who had acquired lots in the city) clear title to the land within a 960-acre (1 mile by 1.5 mile) rectangle of land encompassing most of the original Auraria and Denver City town plats.⁵⁷

Jerome Smiley, author of the definitive *History of Denver* (1901), put it this way:

It is to be remembered while we are considering the affairs of these Town Companies that none of them had any valid title to the soil on which their operations were carried forward. All of them were merely squatters on land to which the Indians had the first claim under the conditions then existing. As this was Indian land not open to entry, no title could be acquired to it through the ordinary operation of the land laws of the United States. This was the legal aspect of the situation; and in theory, at least; it remained so until, in 1861, a treaty was made at Bent's Fort pursuant to a resolution of the United States Senate, with the Cheyenne and Arapahoe Indians, under which they ceded all their lands "in the Pike's Peak region" to the United States. This was done as part of the proceedings in organizing a new Territory here, but it did not give title to these town companies. Prior to that extinguishment of Indian title and, as a matter of fact, for some time afterward, possession and improvement of the town lots carried title of right that was maintained with guns upon occasion; though it was not until Congress enacted the law of May 28, 1864, "for the relief of the citizens of Denver," and making what is known in real estate annals as "the Congressional grant," that these defective titles growing out of the irregular proceedings of the founders of Denver, were confirmed and made good⁵⁸.

The land was later transferred to the cities, and the Tribes were never compensated. By any civil notion of legally valid construction of contracts (treaties are contracts), this treaty is invalid, and the transaction created by Congress should be voided.⁵⁹

ADDITIONAL EVIDENCE OF FRAUD AND DECEIT

Indian agent Boone was illegally building a ranch at the mouth of the Huerfano River on a section of Indian land he had stolen. He knowingly deceived everyone by failing to reveal this conflict of interest. Again, his illegal involvement in the Treaty should have caused the treaty to be withdrawn.

The following Cheyenne and Arapaho signed the Fort Wise Treaty of 1861:

Arapaho

Ho-ha-ca-che (Little Raven)
Ac-ker-ba-the (Storm)
Che-ne-na-e-te (Shaved Head)
Ma-na-ca-te (Big Mouth)

Cheyenne

Me-tu-ra-to (Black Kettle)
Vo-ki-rokamast (White Antelope)
Avo-naco (Lean Bear)
Ohi-a-ha-ket (Little Wolf)
Na-ko-harstule (Tall Bear)
Hano-a-na-co (Left Hand or Namos)

CRONYISM AND DISHONESTY AT THE TOP

In March of 1862, John Evans, a prominent and wealthy citizen of Illinois, was appointed Territorial Governor and ex-officio Superintendent of Indian Affairs by his friend, President Abraham Lincoln. Evans, a millionaire, had supported Lincoln in the Illinois Republican convention, and Lincoln had stayed at Evans's home on Lake Michigan. Their friendship was deep. President Lincoln questioned parts of the Fort Wise Treaty and was reported to have said that he would deal with Indian affairs after the Civil War. At a minimum, cronyism was at play in approving the Treaty.⁶⁰

AFTERMATH OF THE INQUITOUS FORT WISE TREATY OF 1861

The Indian agent tried to encourage the Northern Indians to come in and sign the treaty. All tactics failed, and only one Indian came in to sign; he was not a leader and was said to be drunk. In the meantime, more invaders were coming to Colorado, causing more stress and problems for the Indian Nations. Ironically, the Northern People understood that they had not sold their land and were going to protect their homeland.

In 1862, the Homestead Act, the Pacific Railroad Act, and the Morrill Act all transferred vast areas of stolen Indian land into the public domain. In Colorado alone, the Pacific Railroad Act allowed railroads to claim a two-hundred-foot-wide right-of-way. Upon completion of each mile of rails put in place, the Union Pacific Railroad could claim 6,400 acres of land. John Evans was one of the commissioners appointed to a board to oversee railroad development.

In early 1863, S.E. Browne, a U.S. Attorney in Denver overseeing the land survey, wrote a letter to the secretary of the interior seeking clarification about which land had been ceded. The secretary of the interior failed to respond. Browne took matters into his own hands, and an official representative of the federal government in the Colorado territory issued his own opinion. The land north and west of the South Platte had not been ceded. The U.S. attorney sent his statement to Indian Commissioner Dole (another Lincoln crony) to inform him that the lands, including Denver and the gold mining districts along the front range, were illegally occupied by invaders, trespassers, and squatters. Upon learning of the opinion, Evans, the territorial governor, insisted that it was unacceptable under any circumstances and had no basis. Commissioner Dole realized the Northerners would likely win if this reached the courts. Dole ordered Evans to solve the problem and go “ahead with another council and get the rest of the chiefs to agree to the treaty of 1861.”⁶¹

EVANS’S ATTACK ON INDIANS

When John Evans faced the legal dilemma of taking the right action, he failed. Instead of following the law immediately, he decided that the course of action was to exterminate the Indians. He did not even consider removing the illegals from the land and prosecuting them under the Indian Intercourse Act of 1834. Instead of gathering the Nations for a council as the Indian Commissioner Dole had directed him, he chose to ignore that order.⁶² When the leaders of the Nations came to him seeking peace, he rejected them. Instead, he implemented a plan for the removal of all Indians in Colorado. He aggressively and egregiously committed derelictions of duty as the Superintendent of Indian Affairs in Colorado. He chose to ignore his responsibilities; Rather, he went forth with a plan to guarantee him future wealth from railroad deals. His actions left him morally bankrupt as he implemented his program of genocide on Indians.

THE EVANS PROCLAMATIONS

In the spring of 1864, Territorial Governor and Acting Superintendent of Indian Affairs John Evans created a plan to separate “friendly” Indians from those considered “hostile.” His plan was rejected by the Indian department when Charles E. Mix, acting in place of Commis-

sioner Dole, provided this directive:

You will use every endeavor to keep the peace with the Indians, and it is hoped that the troops will soon be at your disposal for that purpose. It is not contemplated that the Indians should be collected and fed on the reservations, but they should be concentrated, if anywhere, about the buffalo range.⁶³

Evans ignored the order and, in its place, issued a proclamation essentially declaring war on Indians who were not at Fort Lyon. When the first proclamation failed to kill enough Indians, Evans issued a second, and more insanely illegal pronouncement. His justification was that “most Indian tribes of the plains are at war and hostile to whites.” Not a single upstanding citizen of Denver stood against this genocidal act.

THE SECOND EVANS PROCLAMATION

Therefore, all citizens of Colorado, either individually or in such parties as they may organize, are authorized to go in pursuit of all hostile Indians on the plains, scrupulously avoiding those who have responded to my call to rendezvous at the points indicated; also, to kill and destroy as enemies of the country wherever they may be found, all such hostile Indians. As a reward for killing these Indians, you have permission to keep the property of the victims.⁶⁴

Not long after this declaration of war and the authorization to murder people in their homelands, which they had not surrendered, Evans followed through with his extermination plan and murdered unsuspecting, helpless Indians at Sand Creek.

WAR OF EXTERMINATION

While studying and critically analyzing the history of Indian people in Colorado, I learned that the U.S. military ruthlessly, forcefully, and with great malice directed nearly all hostility toward Indians. The aggression carried out through their implicit and explicit acts created an unwritten and not widely known policy of extermination. This policy was ubiquitous in every aspect of Indian-white relationships.

We have all learned about the attacks on our culture, way of life, and our religions. We have specific terms such as assimilation, acculturation, relocation, and termination, which all have their niches in eliminating Indians. At no time in any of the history books or the enclaves of anthropology have I ever read that the military had such a cruel role in our history. It has been glossed over, and even the most horrific massacres are cruelly and imperceptibly blamed on us.

I am thoroughly convinced and cannot retreat from my position that the military was critically responsible for our demise, and not just on the battlefield. The minds of early Americans were manipulated and poisoned with stories of Indian cruelty and savagery, and most came from military leaders. The infamous General Sheridan, when confronted about Indians, responded by saying, “The only good Indian is a dead Indian.” The American people of the day were brainwashed into believing all Indians should be killed. This cult-like behavior was so pervasive in the West that the destruction of the “Indian” became a mandate for all the perverted, uncivilized deathmongers who stole Indian land. In the book *The Indian War of 1864*, written by a young soldier who came west to kill Indians, the only theme articulated was that the military was there to kill Indians in any manner necessary. In one case, they left out a barrel filled with whiskey and a hefty dose of strychnine.

Standing out on the prairie not far from the house was a barrel of whiskey, all by itself, untouched. One of my men said it was poisoned; he had heard from one of the men who had come down from Gillette’s Ranch say that they put a lot of strychnine in a barrel of whiskey and stuck it up where Indians could get it.⁶⁵

In another case, it has been reported that strychnine was used to poison hungry Indians who approached the invaders’ camps.⁶⁶

The Peace Commission of 1868, while purportedly advocating for peace with the Indians, became a subterfuge for the extermination practice to continue. The Great Peace Commission of 1867-1868 was a pretense to move Indians into narrow strips of land or eliminate them.⁶⁷ In addition, the Peace Commission’s final meeting came with two dubious resolutions that caused the Indian bureau to be moved to the war department. Even more destructive was a call for the end of treaty-making. Without treaties to protect Indians and under the U.S. military, the extermination policy flourished.

The error of the old commission’s policy, [General William T.] Sherman explained to a reporter, had been plainly demonstrated. “Too many scalps have disappeared from the heads of legitimate owners to make it safe to prolong this policy.” And there was no doubt about where the presumptive next President of the United States stood, General Grant told the same reporter that the settlers and emigrants had to be protected even if it meant the extermination of every Indian Tribe.⁶⁸

“The extermination mindset had part of its foundation in an opposition to the central aspect of American Indian worship of the natural world, where they sought to live in balance and harmony.”⁶⁹ This is juxtaposed with the following:

Whites, on the other hand, worshiped otherworldly abstractions. The Christian God in His heaven, the place of all goodness, ruled over a natural world below that was the source of all evil. Far from encouraging His children to seek harmony with the wilderness, He commanded them to subdue and destroy the wilderness and make it blossom with the fruits of their industry.⁷⁰

I will never forget the chorus of the sound in my mind of the good Christian people of Denver, when allowed to voice their opinion about Indians, started cheering and shouting, “Exterminate them! Exterminate them! Exterminate them!”⁷¹

CONCLUSION

The work on this treatise for the Truth, Restoration, and Education Commission has been developing for almost three years. It is incomplete, as the voices of the People have not been directly included. The work encompasses reviewing hundreds of books and other narratives scrutinized for inaccuracies, misrepresentations, untruths, lies, deceit, and every synonym for finding and parsing out the Truth. The work is not finished and only covers a specific period. We will continue examining, critiquing, researching, and reporting on the Cheyenne. The next report will cover the years 1864 to the present.

ATTACHMENTS

1. Spotted Elk, Sheldon C. (2012). Northern Cheyenne Tribe: Traditional Law and Constitutional Reform. *Tribal Law Journal* 12(1), Article 6, 1-18.
2. Prucha, Francis Paul. (1994). *American Indian Treaties: The History of a Political Anomaly*. University of California Press. 440-445.
3. Coel, Margaret. (1981). Chief Left Hand. University of Oklahoma Press. Chapter 9, 110-122.
4. Unrau, William. (1964). Prelude to War. *The Colorado Magazine*, XLI(4), 299-313.

ENDNOTES

- 1 TWENTY-THIRD CONGRESS. Session I. Ch. 161. 1834 Chap. CLXL. ----An Act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers. Statute I. June 30, 1834
- 2 Luke Lea Commissioner of Indian Affairs 1852 to A.H.H. Stuart, May 29, 1852, Printed in Kappler, Indian Affairs; Laws and Treaties; Vol. IV, Laws, compiled to March 4,1927; Compiled, Annotated, and Edited by Charles J. Kappler, LL.M.; of the Bar of the District of Columbia. p. 1078; see also Prucha, **American Indian Treaties**, p. 440.
- 3 For example, see **Proceedings of the Great Peace Council of 1867-68**, The Institute for the Development of Indian Law, Raymond DeMallie, 1975
- 4 Until recently, many Lakotas spoke of the “Chicago Re-write” because they believed their words would be included in the Treaty of Fort Laramie 1868. The Peace Conference in Chicago never altered the treaty as presented to the Lakota; they just simply ignored all of the input.
- 5 Gary Roberts unpublished dissertation.
- 6 Steve Brady, Sr., Northern Cheyenne, quoted form Sheldon Spotted Elk, “**Northern Cheyenne Tribe: Traditional Law and Constitutional Reform.**” Tribal Law Journal Volume 12.
- 7 Sheldon Spotted Elk, “**Northern Cheyenne Tribe: Traditional Law and Constitutional Reform.**” Tribal Law Journal Volume 12; Article 6, (2012).
- 8 **Northern Cheyenne Tribe: Traditional Law and Constitutional Reform.**” Tribal Law Journal Volume 12; Article 6, (2012).
- 9 **Northern Cheyenne Tribe: Traditional Law and Constitutional Reform.**” Tribal Law Journal Volume 12; Article 6, (2012).
- 10 George Bird Grinnell; *The Fighting Cheyennes*, University of Oklahoma Press- Norman; p.6-7
- 11**Northern Cheyenne Tribe: Traditional Law and Constitutional Reform.**” Tribal Law Journal Volume 12; Article 6, (2012). See also; Leo Kills Back; *A Sacred People; Indigenous Governance, Traditional Leadership, and the Warriors of the Cheyenne Nation*; Texas Tech University Press (2020) p.189
- 12 Leo Kills Back; *A Sacred People; Indigenous Governance, Traditional Leadership, and the Warriors of the Cheyenne Nation*; Texas Tech University Press (2020) p. 27-28
- 13 This was discovered by the author while reviewing various treaties.
- 14 From the articles produced by the Missouri Republican 1851
- 15 See Section 11 of the Indian Trade and Intercourse Act of 1834
- 16 Possible map showing the 1851 boundaries? NOTE
- 17 Quoted from Article 5 of the Fort Laramie treaty of 1851.
- 18 *American Indian Treaties -The History of a Political Anomaly* by Francis Paul Prucha p.440
- 19 Luke Lea Commissioner of Indian Affairs 1852 in *American Indian Treaties -The History of*

a *Political Anomaly* by Francis Paul Prucha p.440 and originally cited in Luke Lea Commissioner of Indian Affairs 1852 to A.H.H. Stuart, may 29, 1852, Printed in Kappler, *Indian Affairs; Laws and Treaties; Vol. IV, Laws*, compiled to March 4,1927; Compiled, Annotated, and Edited by Charles J. Kappler, LL.M.; of the Bar of the District of Colombia. p. 1078

20 Harry Anderson,” Tue *Controversial Sioux Amendment to the Fort Laramie Treaty of 1851*,” Nebraska History 37 (1956): 201-220. Anderson provides an interesting account but errors in his final interpretation.

21 Francis Paul Prucha, *American Indian Treaties -The History of a Political Anomaly* by Francis Paul Prucha p.441

22 Francis Paul Prucha, American *Indian Treaties -The History of a Political Anomaly* p.442

23 Charles J. Kappler, LL.M; *Indian Affairs; Laws and Treaties; Vol. IV, Laws*, compiled to March 4,1927; Compiled, Annotated, and Edited by.; of the Bar of the District of Colombia. p. 1080

24 Francis Paul Prucha, American *Indian Treaties -The History of a Political Anomaly* p.441-442; See P. 441 for a full explanation and details of the failure to get the treaty ratified.

25 Note: In the *Annual report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, Volume 18, Part 2. Indian Land Cessions in the United States*, compiled by Charles C. Royce 1899; P 786, footnote.

26 Francis Paul Prucha, American *Indian Treaties -The History of a Political Anomaly* See p.441 for a full explanation and details of the failure to get the treaty ratified.

27 Gary Roberts P.64 *Unpublished dissertation*. I would be remiss if I did not mention that Gary Roberts unpublished dissertation and all of his work is significantly superior to other historians. His writing style and 360 degree perspective on every relevant topic leaves no consternation or hesitation about the subject matter.

28 Note: This segment was taken directly with some modifications from the editorial articles written in the Missouri Republican in 1851.

29 Remi Nadeau, *Fort Laramie and the Sioux Indians*, Prentice-Hall; (1967) p.90-91; Leroy R. Hafen and Francis Marion Young; *Fort Laramie and the Pageant of the West 1834-1890*, University of Nebraska Press; (1938) p. 221-245

30 Years later an author wrote a fictional story about the incident.

31 William Y. Chalfant P *Cheyenne's and Horse Soldiers- The 1857 Expedition and the Battle of the Solomon's* Fork pp.59-61

32 George Bird Grinnell; *The Fighting Cheyenne*; University of Oklahoma Press, (1915); pp. 112-123

33 Margaret Coel; *Chief Left Hand*. University of Oklahoma press; (1981) pp.110-122. Margaret Coel's research on the details of what happened around the Fort Wise Treaty of 1861 is highly recommended.

34 Ibid., p.114

35 Ibid., p.120

36 Ibid., p.114

37 Ibid., p.116

38 David Lavender, *Bent's Fort*; Doubleday & Company (1954) p. 346

39 Margret Coel, *Chief Left Hand* , pages 110-122. For the complete saga of the treaty negotiations, see Chapter 9.

40 Cited in *Chief Left Hand* by Margret Coel, page 118, and in his testimony. See U.S., Congress, Senate, "The Chivington Massacre," *Reports of the Special Committees on the Condition of Indian Tribes*, Sen. Report 156, 39th Congress, 2d Sess., 1867 p.156

41 Margret Coel, *Chief Left Hand*, pages 118-119

42 Correspondence from Indian Commissioner Dole to Territorial Governor Evans, July 16th, 1863

43 Report of the Commissioner of Indian Affairs 1862; Colorado Superintendency (1862). P.33

44 William Unrau, *Prelude to War*, Colorado History Magazine, XLI/4; 1964

45 This may be inaccurate as only 10 Cheyenne signed the treaty. The Treaty of 1868 is reviewed later in this report.

46 Indian Claims Commission docket number 329; decided December 1961, p. 35-36

47 *Rocky Mountain News*, April 18, 1860

48 State department letter dated August 12, 1861

49 Correspondence with Dr. Gary Roberts on Sept. 14, 2023.

50 Original hand written documents explaining the process.

51 News Article from the Rocky Mountain News 09/11/1861

52 This information comes from the original hand written transcripts of the original Treaty of Fort Wise and the Amendment of October 29, 1861.

53 (U.S. Congress, Senate, *Congressional Globe*, Debate on the Indian Appropriations Bill, 37th Cong., 2d sess., 13 May 1862, pt. 3:2095

54 H.R. Report 98; 42ND, Cong. 3D Sess.; Investigation of Indian Frauds; Vol. 1, 1872

55 This is the summary contained in the Amendment to the Fort Wise Treaty dated October 29, 1861.

56 David A. Nichols, *Lincoln and the Indians: Civil War and Politics* p.6-7; University of Missouri Press (1978)

57 Jerome Smiley, author of the definitive *History of Denver* (1901),

58 The Congressional Act of 1864, as described, was illegal. The land had never been transferred and the Tribes have never been compensated for the land.

59 The concept of deception regarding treaties was addressed earlier in this report. What is a treaty? "A treaty is a contract, a binding and legal agreement, between two or more sovereign nations. By signing treaties with Indian tribes, the United States acknowledged tribal sover-

eign status. When the architects of the American government created the Constitution, they explicitly recognized that treaties are the supreme law of the land, along with the Constitution itself.”

60 An excellent source for the description of all the corruption in Indian Affairs see; David A. Nichols, *Lincoln and the Indians, Civil War Policy and Politics*; University of Missouri Press 1978

61 William Unrau, *Prelude to War*, Colorado Magazine 1964. William Unrau explained this complicated issue in the *Prelude to War*, published in the Colorado Magazine in 1964. The article, *Prelude to War*, is critical to understanding the complexity of the unceded land North of the South Platte.

62 Copy of Dole to Evans correspondence, July 16th, 1863

63 Evans first Proclamation was on June 27th, 1864

64 Evans second proclamation was on August 11, 1864 and led directly to the Sand Creek Massacre.

65 Captain Eugene F. Ware, *The Indian War of the 1864*; p.378; University of Nebraska Press, 1960::: The book was originally published by Crane & Company in 1911 with the subtitle; “*Being a Fragment of the Early History of Kansas, Nebraska, Colorado and Wyoming.*”

66 Family stories from Ritch and Bill Tall Bull about their great-grandfather.

67 *Proceedings of the Great Peace Commission of 1867-68*, By Proceedings of the Great Peace By United States. Indian Peace Commission, Vine Deloria, Raymond J. DeMallie; 1975

68 Found in Utley’s ; *The Indian Frontier of the American West 1946-1890*, University p. 125. From the New York Times, October 16, 1868

69 Cited from Slotkin, *Regeneration through Violence*, p. 45. A sensitive examination of Indian religion is Hartly Burr Alexander, *The Worlds Rim: Great Mysteries of the American Indian*. (Lincoln Nebraska, 1953)

70 (1984).Cited from Slotkin, *Regeneration through Violence*, p. 45. A sensitive examination of Indian religion is Hartly Burr Alexander, *The Worlds Rim: Great Mysteries of the American Indian*. (Lincoln Nebraska, 1953)

71 Robert M. Utley, *The Indian Frontier of the American West 1946-1890*, University of New Mexico Press. (1984). p.102; see also the Rocky Mountain News newspapers account, As historian Robert Utley recreates the scene, Doolittle told his hearers that the question at hand was whether the Indians should be placed on reservations and taught to support themselves or simply be exterminated.

Doolittle, at least up to that night, seems to have entertained an exalted view of the attainments of his countrymen. Utley quotes him: “There suddenly arose such a shout as is never heard unless upon some battlefield — a shout almost loud enough to raise the roof of the Opera House — “Exterminate them! Exterminate them!”

PART II

Cheyenne History

1864 - 1879

INTRODUCTION

The year 1864 was the most traumatic for the Cheyenne People. The Sand Creek Massacre was devastating and would be forever in the People's minds. Their way of life would be changed in many ways, especially their relationships among the bands and with their closest allies, the Arapaho and Lakota.

THE SAND CREEK MASSACRE

We are not going to go into the details of the massacre. Many historians before us and the congressional hearings tell the appalling story in great detail. A complete report on the hearings is available in *The Sand Creek Massacre: A Documentary History*, with an introduction by John M. Carroll, published in 1973.

JOHN EVANS: COLORADO TERRITORIAL GOVERNOR AND SUPERINTENDENT OF INDIAN AFFAIRS

At the time and in the aftermath of Sand Creek, John Evans, the territorial governor and superintendent of Indian Affairs, was neither criminally indicted nor convicted for his actions in instigating the massacre. Nonetheless, he was guilty of murder. Evans deliberately ignored the illegal occupation of trespassers and squatters in Colorado and instead focused on eliminating Indians.

More than any other person involved in the Sand Creek Massacre, John Evans was personally responsible for the slaughter of the People at Sand Creek. He failed in his professional duties as the superintendent of Indian Affairs for Colorado. Evans deliberately rejected peace offerings from the Cheyenne and Arapaho, and that decision led to the Sand Creek Massacre. The Sand Creek Massacre is perhaps the most horrendous display of human savagery documented in the New World.

In the book *Massacre at Sand Creek*, Gary Roberts wrote,

[‘A]t Sand Creek, demonic forces seemed unloosed so completely that humanity itself was the casualty.’ At the center of this slaughter, one man, John Evans, failed all humanity. He illegally declared war on all ‘hostile’ (a questionable adjective) Indians. When not enough Indians were being slaughtered for legally defending their land, he released a second illegal proclamation calling on all citizens of Colorado to ‘kill hostile Indians’ and take their property.¹

The mention of his iniquitous name should release blood memories of guilt in the minds of every American citizen living today. As honorable people, Americans have no credible reason to continue the lies and deceit that are inherently part of Colorado’s sordid history in dealing with American Indians.

The Joint Committee on the Conduct of the War offered a sweeping denunciation of the incident. It is difficult to believe that beings in the form of men and disgracing the uniform of United States soldiers and officers could commit such acts of cruelty and barbarity as were detailed in the testimony. The committee further stated that Evans’s testimony was “characterized by such prevarication, and no witness has shown shuffling that they have examined during the four years they have been engaged in their investigations.”²

The Joint Committee on the Conduct of the War passed a resolution calling for the immediate removal of Evans. Colorado Delegate Allen A. Bradford accused Evans of inefficiency, neglect of duty, pursuing private interests, and interfering with the statehood election; most importantly, he charged him with that.

In his management of Indian Affairs and the territory, Evans had pursued a policy that had intensified the hostility of Indians and provoked their attacks upon citizens of the territory and the routes of travel, thus preventing immigration and disturbing business and trade. He had given countenance and encouragement to the massacre of peaceable Indians and destroyed their faith and confidence in the sincerity and obligation of government treaties.³ The disturbing part of the history of Evans is that within a few short years, he managed to weasel his way back into good standing and had numerous streets, towns, and even a mountain named after him.

SAND CREEK AFTERMATH

In 1865, the Joint Committee on the Conduct of the War investigated the Sand Creek Massacre and concluded: “The truth is that he [Colonel Chivington] surprised and murdered, in cold blood, the unsuspecting men, women, and children on Sand Creek, who had every reason to believe they were under the protection of the United States authorities, and then returned to Denver and boasted of the dastardly deed he and the men under his command had performed.”⁴

Another congressional committee, the Joint Special Committee on Conditions of Indian Tribes, also investigated the Sand Creek Massacre in 1865 as part of a more extensive review of U.S.-Native American affairs across the country and territories.⁵ Of the five conclusions outlined in their report, the first linked the ongoing conflicts with Indigenous Peoples directly to the actions of “lawless white men.” A group of legislators from the committee visited Fort Lyon in 1865 and told tribal members that the government disapproved of Chivington’s actions.⁶ However, Chivington had already resigned from his military commission and thus was not prosecuted for the massacre. After Sand Creek, Chivington changed residences frequently and was involved in several scandals. He defended his actions at Sand Creek until the end of his life in 1894.⁷

THE CHEYENNE 1864 TO 1879

After Sand Creek, the lives of all the Indian Nations living in Colorado changed dramatically forever. The Cheyenne and Arapaho sought refuge as far away from the savage invaders as possible. While the wounds were healing and the mourning began, all the Chiefs met and pledged war against the sadistic people who had killed so many of their loved ones. The Pipe was to be sent to the other tribes to seek support. As the runners were leaving, the plan for retaliation began.

My grandmother described the Cheyenne warriors as the bravest of all the tribes. She said they were kind, quiet, peaceful people who would take insults, but you should not push them too far because they were ferocious when they struck back.⁸

The Cheyenne and Arapaho retaliated over the next several months, burning ranches and other white settlements. The first major attack was on Julesburg, Colorado, located about 200 Miles Northeast of Denver. Julesburg served as a stage station with a large stable, a place to eat, a blacksmith shop, and several large warehouses. A well-built sod wall surrounded a large corral, and there was a large store well-stocked with all kinds of goods to be sold to the travelers and immigrant trains passing this point. The Overland Telegraph Company also had an office there. About 40 to 50 men were working here, and Fort Sedgwick was nearby.⁹ In oral history accounts, the area around Julesburg was where Cheyennes were poisoned by settlers using strychnine.¹⁰

The Cheyenne and others devised a plan to lure the soldiers out of the fort. This was used frequently among the People and nearly worked. Sixty soldiers rode out of the fort to attack the decoys. The ploy was going well as the soldiers pursued the small party into the trap. Unfortunately, several young warriors broke rank and ambitiously started toward the oncoming soldiers. The leader of the troops stopped his men and quickly reversed back to the Fort. The warriors closed in but were unable to do much damage. At this very same time a stagecoach was arriving and the driver, the passenger, and the staff at the stage station made a hasty retreat to the safety of the Fort.¹¹

The attack on the fort was unsuccessful, and the warriors turned their attention to the warehouses, where they helped themselves to all the much-needed supplies. It was reported that George and Charles Bent (whose mother was married to William Bent), as well as several others entered the stage station, where a warm breakfast was on the table. They sat down for a nice meal. They found an iron box outside the stage station; it was the only item on the stage. They broke it open, and it was filled with paper cash. They were delighted to throw the paper into the wind, which carried it for miles.¹²

A large herd of cattle was driven off, but the warriors refrained from burning the building this time. That night after a large feast and celebrations, the Chiefs made plans to move the People north. The People were still mourning, and the revenge lifted their spirits.¹³ Not all bands decided to go north; three bands stayed near White Butte Creek. The three bands were the Cheyenne Southerners, a few Southern Lakota, and the Southern Arapaho. They attacked Julesburg one more time and then headed north to join the other bands in the north country.

Eighty lodges under the leadership of Black Kettle decided to stay in the south and begin the journey further south to be away from the invaders. They found Little Raven's camp south of the Arkansas River and stayed out of sight to avoid the soldiers.¹⁴ A small band of Lakota comprised of about 80 lodges had decided to spend the winter with the People in the south, which they had often done in the past. They smoked the Pipe of their relatives and formally declared war and joined the plans for revenge. The Oglala and Sicangu Lakota leaders were Spotted Tail, Bad Wound, Pawnee Killer, and Little Wound.

This was the only time the Cheyenne ever declared war against the intruders. The war was waged from late 1864 to 1879. During this time the Southern Cheyenne and Arapaho remained allied with the Sicangu and Oglala Lakota, and continued as enemies with the U.S. Army, Colorado militia, Pawnees, and white invaders to their homelands.¹⁵

Not all Indians were committed to war. After the raid, Black Kettle and 80 lodges of his followers (perhaps 100 men and their families) left the main body and joined the Kiowa and Comanche south of the Arkansas River. Many of the Southern Arapaho likewise had moved south of the Arkansas River.¹⁶

On February 2, 1862, the Indians left their large camp on the South Platte River and continued north toward the Powder River country in Wyoming to join their relatives there.

The Lakota led the way as they were most familiar with the territory. The Cheyenne attacked Julesburg a second time and had two more skirmishes in Nebraska with the U.S. army at Mud Springs and Rush Creek. In the following months, the Cheyenne and Lakota frequently raided wagon trains and military establishments along the Oregon Trail in Wyoming.¹⁷

In the summer of 1865, the Arapaho, Cheyenne, and Lakota launched a large-scale offensive in the Battle of the Platte Bridge (present-day Casper, Wyoming) achieving a minor victory. Later that summer, the U.S. army invaded Indian Territory in Wyoming with more than 2,000 soldiers in the ineffective Powder River Expedition.¹⁸

1865 POWDER RIVER EXPEDITION

General Greenville M. Dodge, in command of the Military Division of the Missouri, designed a costly and poorly planned attack on the Cheyenne, Lakota, and Arapaho. A major pincher attack was scheduled for the late spring of 1865 in the typical military maneuver on the northern plains. Troops would approach from the northern part of the Black Hills while another group led by General Patrick Connor led the approach from the south. It took until August to get into the field.¹⁹

General Connor led the military attack from July to September 1865 against the Lakota, Cheyenne, and Arapaho Indians who were trying to protect their homelands along the Bozeman Trail and overland mail routes from an illegal throng of aggressive intruders. Connor had over 2,500 men who were divided into three units, and the planned attack was described as disorganized. Connor's orders to his officers were typical of the military hostility toward Indians: "You will not receive overtures of peace or submission from Indians but will attack and kill every male Indian over 12 years of age." Connor's superiors countermanded this order but did not seem to halt the slaughter.²⁰

During the Powder River Expedition, the U.S. Cavalry attacked Chief Black Bear's Arapaho camp on August 29. Chief Black Bear and many of the men were away protecting their homelands from an invasion by the Crow. Medicine Man and some older men, women, and children were still in the camp, which was preparing to move further north. The ones who could fight made a stand while the women and children scattered. The soldiers wantonly destroyed the village and chased the Indians 10 miles up Wolf Creek. The Indians fought, trying to protect their families, and many managed to escape. This unprovoked attack brought the Arapaho into the conflict in the north, and they joined the Lakota and Cheyenne to desperately try to hold on to the homeland.²¹

At the same time, Pawnee scouts killed a band of 24 Cheyenne warriors. Most of the time, however, Connor's three units were on the defensive, fending off Indian raids on their horses and supply wagons, which left many U.S. soldiers on foot, in rags, and reduced to eating raw horse meat. On the whole, the expedition was considered "a dismal failure" carried out with

“large, ungainly columns filled with troops anxious to get home now that the Civil War was over.”

It should be noted that this was not the last time the Northern and Southern Cheyenne and Arapahos and the Lakota were united to effectively resist the tide of white settlers and soldiers traveling through and settling on what had formerly been their lands.

By December 1865, the conflict along the South Platte began to diminish. Most of the Southern Cheyenne and Arapaho who had journeyed north to Wyoming had returned to the Smoky Hills. The Sicangu under Spotted Tail, who had been allies of the Cheyenne and Arapaho, had temporarily settled near Fort Laramie.

The following is the Fort Laramie Treaty of 1868. I am including it in the text rather than as an addendum because of the technical legal issues throughout the treaty.

FORT LARAMIE TREATY OF 1868 WITH THE NORTHERN CHEYENNE AND NORTHERN ARAPAHOE INDIANS²²

Articles of a treaty made and concluded at Fort Laramie, Dakota Territory, on the tenth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between the undersigned commissioners on the part of the United States, and the undersigned chiefs and head-men of and representing the Northern Cheyenne and Northern Arapahoe Indians, they being duly authorized to act in the premises.

Article 1. From this day forward, peace between the parties to this treaty shall forever continue. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of anyone, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other money due or to become due to them

under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating or because of his violating the provisions of this treaty or the laws of the United States shall be reimbursed therefor.²³

Article 2. The Indians, parties to this treaty, hereby agree to accept for their permanent home some portion of the tract of the country set apart and designated as a permanent reservation for the Southern Cheyenne and Arapahoe Indians by a treaty entered into by and between them and the United States, at Medicine Lodge Creek, on the—day of October, eighteen hundred and sixty-seven,²⁴ or some portion of the country and reservation set apart and designated as a permanent home for the Brule and other bands of Sioux Indians, by a treaty entered into by and between said Indians and the United States, at Fort Laramie, D. T., on the twenty-ninth day of April, eighteen hundred and sixty-eight.²⁵ And the Northern Cheyenne and Arapahoe Indians do hereby relinquish, release, and surrender to the United States all right, claim, and interest in and to all territory outside the two reservations above mentioned, except the right to roam and hunt while game shall be found in sufficient quantities to justify the chase.²⁶ And they do solemnly agree that they will not build any permanent homes outside of said reservations and that within one year from this date, they will attach themselves permanently either to the agency provided for near the mouth of Medicine Lodge Creek or to the agency about to be established on the Missouri River, near Fort Randall, or to the Crow agency near Otter Creek, on the Yellowstone River, provided for by the treaty of the seventh day of May, eighteen hundred and sixty-eight, entered into by and between the United States and said Crow Indians, at Fort Laramie, D. T.; and it is hereby expressly understood that one portion of said Indians may attach themselves to one of the afore-mentioned reservations, and another portion to another of said reservations, as each part or portion of said Indians may elect.²⁷

Article 2 of the 1868 Fort Laramie Treaty with the Cheyenne and Arapaho has some unique issues that create a significant violation of this treaty. Regarding the reservations that were supposed to be created for the Cheyenne and Arapaho, the following is the exact language of the treaty:

And the Northern Cheyenne and Arapahoe Indians do hereby relinquish, release, and surrender to the United States all right, claim, and interest in and to all territory outside the two reservations above mentioned, except the right to roam and hunt while game shall be found in sufficient quantities to justify the chase.

The creation of the two proposed reservations never happened, rendering Article 2 invalid and thereby voiding the treaty, unless a later amendment authorizing the modification was accepted and approved by both parties. There is no historical evidence that this happened. The language that ended the treaty relationship with Indian Nations stated that all treaties would be honored. That did not happen in this case. The story behind how the two reservations were established is fraught with errors and omissions. The Northern Cheyenne reservation was created as an Executive Order Reservation and is outside the perimeter of the guidelines set forth by the treaty. As such, it failed to meet the criteria promulgated in Article 2.

Establishing the Northern Arapaho reservation produced a mishmash of confusing issues that caused continuing consternation for the Arapaho.

Article 3. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming,²⁸ he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservations not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the “Land Book” as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it. Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed. For each tract of land so selected a certificate containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it by the agent after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the “Northern Cheyenne and Arapahoe Land Book.” The President may, at any time, order a survey of the reservation; and when so surveyed, Congress shall provide for protecting the rights of settlers in their improvements, and may fix the character of the title held by each. The United

States may pass such laws on the subject of alienation and descent of property as between Indians and on all subjects connected with the government of the Indians on said reservations, and the internal police thereof, as may be thought proper.²⁹

Article 4. In order to insure the civilization of the tribe entering into this treaty, the necessity of education is admitted, especially by such of them as are or may be settled on said agricultural reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for twenty years.³⁰

Article 5. When the head of a family or lodge shall have selected lands, and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year in value one hundred dollars, and for each succeeding year he shall continue to farm for a period of three years more he shall be entitled to receive seeds and implements as aforesaid in value twenty-five dollars per annum. And it is further stipulated that such persons as commence farming shall receive instructions from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.³¹

Article 6. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any and all treaties heretofore made with them, the United States agrees to deliver at the agency-house, on the reservations herein provided for, on the first day of September of each year, for thirty years, the following articles, to wit:

For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, hat, pantaloons, flannel shirt, and a pair of woolen socks.

For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit, as aforesaid, together with a pair of woolen hose for each.

And so that the Commissioner of Indian Affairs may be able to estimate correctly for the articles herein named, it shall be the duty of the agent each year to forward to him a complete and exact census of the Indians, on which the estimates from year to year can be based.

And, in addition to the clothing herein named, the sum of ten dollars shall be annually appropriated for each Indian roaming. Twenty dollars for each Indian engaged in agriculture, for a period of ten years, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if, at any time within the ten years, it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the tribes herein named, Congress may by law change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods,³² herein named, to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery; and it is expressly stipulated that each Indian over the age of four years, who shall have removed to and settled permanently upon said reservation and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided that the Indians cannot furnish their own subsistence at an earlier date; and it is further stipulated that the United States will furnish and deliver to each lodge of Indians, or family of persons legally incorporated with them, who shall remove to the reservation herein described and commence farming, one good American cow and one well-broken pair of American oxen, within sixty days after such lodge or family shall have so settled upon said reservation.³³

Article 7. The United States hereby agrees to furnish annually to the Indians who settle upon the reservation a physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropri-

ations shall be made from time to time on the estimates of the Secretary of the Interior as will be sufficient to employ such persons.

Article 8. No treaty for the cession of any portion of the reservations herein described, which may be held in common, shall be of any force or validity as against the said Indians unless executed and signed by at least a majority of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him, as hereinbefore provided.³⁴

Article 9. It is agreed that the sum of five hundred dollars annually for three years, from the date when they commenced to cultivate a farm, shall be expended in presents to the ten persons of said tribe who, in the judgment of the agent, may grow the most valuable crops for the respective year.³⁵

W.T. Sherman, Lieutenant-General.

Wm. S. Harney, Brevet Major-General, U.S. Army.

Alfred H. Terry, Brevet Major-General.

C.C. Augur, Brevet Major-General.

John B. Sanborn.

S.F. Tappan.

Attest:

Ashton S.H. White, Secretary.

Wah-tah-nah, Black Bear, his x mark.

Bah-ta-che, Medicine Man, his x mark.

Oh-cum-ga-che, Little Wolf, his x mark.

Ichs-tah-en, Short Hair, his x mark.

Non-ne-se-be, Sorrel Horse, his x mark.

Ka-te-u-na Ah-che-e-wah, The Man in the Sky, his x mark.

The Under Man, his x mark.

Non-ne-se-be, Sorrel Horse, his x mark.

Ches-ne-on-e-ah, The Beau, his x mark.

We-ah-se-vose, The Big Wolf, his x mark.

Mat-ah-ne-we-tah, The Man that Falls from His Horse, his x mark.

Oh-e-na-ku, White Crow, his x mark.

A-che-kan-koo-eni, Little Shield, his x mark.

Tah-me-la-pahs-me, or Dull Knife, his x mark.

Attest:

George B. Willis, Photographer.

David Knox.

John D. Howland.

Chas. Freeman.

Alex. Gardner.

Jas. C. O'Connor.

The Cheyenne and Arapahoe [Arapaho] Treaty of 1868 is a real enigma for the People. This is best demonstrated in the following:

The goal of the United States treaty commissions on the plains was not to establish sustained, reciprocal relationships with the current inhabitants of [the] landscape in order to foster joint access to the land and resources. They strove instead to contain and control Native populations. The US failure to formally recognize Northern Cheyenne's rights to the Black Hills and the Powder River region set the stage for the multiple and lengthy struggles of the people to remain in the heart of their homeland... The leaders who signed the Northern Cheyenne and Northern Arapaho treaty had been told that the federal negotiators acknowledged Cheyenne and Arapaho claims to the Black Hills, as well as the country beyond the hills from the North Branch of the Platte all the way to the Yellowstone. Technically, this was true. The treaty recognized that the Cheyenne wished to access the territory but required permission from the Lakota to do so. According to Peter Powell, however, Little Wolf was told by the commissioners that a great swath of land north of the Platte River and stretching west to the Big Horns and east to the Missouri would belong to the Cheyenne and Arapaho.³⁶

The author goes on to explain how the Cheyenne viewed the treaty:

Of the Chiefs of the Council of 44, only Little Wolf, Dull Knife, Big Wolf, and Short Hair signed the 1868 Fort Laramie treaty. The other Northern Chiefs disagreed with this treaty, and when Little Wolf returned from Fort Laramie to the main Cheyenne camp, they were angry with him. Little Wolf tried to convince them that it was a good treaty but to no avail. Most Northern People rejected the 1868 Treaty as a binding agreement because the Council of 44 did not approve it.³⁷

Even today, many Northern Cheyenne say they have never signed a treaty with the United States government. They have a powerful argument. Most of the recognition for the 1868 Treaty went to Red Cloud, but the Cheyenne were far from passive bystanders. The Cheyenne and Crazy Horse forced the issue of the removal of forts from unceded lands.

1868 TO 1876

During these years, the Northern Cheyenne had no permanent home and traveled within their homeland, often staying at the Lakota reservations, such as Red Cloud's camp at Fort Robinson. During this time, gold was discovered in the Black Hills by miners, and the U.S. government tried to buy the Black Hills. In 1874, after a lengthy negotiation held near present-day Crawford, Nebraska, the Lakota and Cheyenne refused the United States' offer. Following the refusal, the U.S. government decided to force the people into submission and take the Black Hills because of the gold that was discovered.

The Northern Cheyenne, Hunkpapa, Ogalala, Miniconjou, Brulé, Sans Arc, Blackfoot bands, and even a few Southern Cheyenne gathered in the Powder River area all that spring of 1876. Many came to hunt, and others planned to attend the annual Sun Dance. Some historians suggest the bands were meeting for protection. This could be true as scouts had announced that a large group of U.S. soldiers was advancing from the south.

The Battle of the Rosebud began on June 17, 1876, and lasted a full day. The Cheyenne and Lakota fought the U.S. military to a standstill. The U.S. forces withdrew from the field and retreated to their base camp. Cheyenne know the battle as the Battle where "the girl saved her brother." The Cheyenne warrior, Comes in Sight, had his horse shot out from under him and was about to be killed when his sister, Buffalo Calf Road Woman, rode to him, under fire, and saved him. Eleven Warriors were killed in the battle and five wounded. The U.S. cavalry suffered 57 dead and wounded. Of this encounter, Wooden Legs wrote:

"We had beaten the white men soldiers. Our scouts had followed them far enough to learn that they were going further and further away from us. We did not know of any other soldiers hunting for us. If there were any, they now would be afraid to come."³⁸

BATTLE OF THE LITTLE BIGHORN 1876

The Northern Cheyenne fought in the Battle of the Little Bighorn, which took place on June 25, 1876. The Cheyenne, the Lakota, and a few Arapaho killed Lieutenant Colonel (brevetted Major General) George Armstrong Custer and much of his 7th Cavalry contingent.

Historians have estimated that the population of the Cheyenne, Lakota, and Arapaho encampment along the Little Bighorn River was approximately 10,000, but that may be exaggerated. There were at least 120 lodges of Cheyenne, including approximately 20 lodges of Southern Cheyenne. Also listed as present were five Arapaho lodges.³⁹ The news of the defeat of Custer hit the mass media when the United States was celebrating its centennial. The news increased the vitriolic attitude toward all American Indian People.⁴⁰

The story of the Battle of the Little Bighorn has been reiterated many times. Of particular note is that Custer attacked the Northern Cheyenne camp and was annihilated. The Cheyenne story, when told, was often discounted because the Cheyenne had different cardinal directions.⁴¹ (See addendum 2 – Powell’s cardinal directions.)

After the 1983 brush fire at the Battle of the Little Bighorn site, Richard Fox, a local archaeologist, discovered information that helped him determine that when the correct cardinal directions as used by the Cheyenne were applied to the battlefield site, the Cheyenne stories were the most accurate.⁴²

The surveys of 1984-85 conducted by Richard Fox produced significant results. They established a precedent for the use of metal detectors in archaeology, which at the time was frowned upon by traditionalists. These techniques have since been accepted and are the standard today. And the fusion of archaeological science with oral and written historical testimony enabled new perspectives on the battle. ...Furthermore, Fox deduces the soldiers in this area, and others, succumbed to tactical disintegration, a military term for panic, as the warriors suddenly overwhelmed them. In such instances, the soldiers become irrational as certain death approaches, bunch together with comrades, and flee in terror.⁴³

DULL KNIFE BATTLE 1876

Following the victory at the Little Bighorn, the Cheyenne moved away, knowing there would be an immediate retaliation by the U.S. military.

After the battle, the large camp that Custer had attacked—around 8,000 Lakota, Cheyenne, and Arapaho people—moved south, then east, and eventually disbanded. The Cheyenne traveled with Crazy Horse and his Oglala Lakota for nearly a month before leaving them and heading southwest, traveling along the western foothills of the Bighorn Mountains in northern Wyoming Territory. This was the main camp of the Northern Cheyenne; their numbers have been estimated between 900 and 1,200.⁴⁴ In November, they moved east over the

Bighorns and raised 173 lodges at the place they called Willow Creek, better known as the Red Fork of Powder River, about 20 miles west of present-day Kaycee, Wyoming. Two days later, on November 25, 1876—five months after Custer’s defeat—U.S. troops found them and burned their village. This little-known battle, referred to as the Dull Knife Fight or the Red Fork Battle impacted the Cheyenne people during the Indian Wars even more than did the Little Bighorn fight.⁴⁵ Included in the camp were up to 20 lodges of Southern Cheyenne.

The Cheyenne were forced to retreat from the area under the harshest conditions. The military burned the camp and destroyed all their winter supplies.⁴⁶ After leaving the battlefield, the Cheyenne split into many groups. Dull Knife searched for the Crazy Horse camp to seek refuge while others, such as Two Moons, chose to surrender to General Nelson Miles at Fort Keogh. On April 21, 1877, after suffering terribly because of lack of food and adequate housing, Dull Knife and Standing Elk surrendered at Fort Robinson, while a few others were being kept at the Spotted Tail Agency north of current Hay Springs, Nebraska.⁴⁷ The total number of Cheyenne lodges in the area was 133.⁴⁸ At the beginning of April Little Wolf, with 386 Cheyenne, surrendered at Fort Robinson.⁴⁹ On May 28, 117 lodges, or approximately 936 Cheyenne, were forcibly moved to the dreaded Southern Cheyenne Agency. There were still 16 lodges or almost a hundred Cheyenne at Fort Robinson.⁵⁰ On September 10, 1877, three lodges of Lane Deer’s people came into Fort Robinson, and one lodge reported to the Southern Cheyenne Agency.⁵¹ The Cheyenne were promised that they could stay in the north, but on May 29, the Cheyenne were removed to the Darlington Agency in Oklahoma. The Cheyenne arrived on August 5 and were enrolled at the Darlington Agency two days later.⁵²

AT THE DARLINGTON AGENCY, 1877

Approximately 35 of the travelers slipped away from the group on their way south; the rest arrived in August 1877. The agent, John D. Miles, welcomed those who completed the trip, fully expecting them to abandon their traditional ways and embrace an agrarian lifestyle. He was sorely disappointed when nearly a third of them, led by Chiefs Little Wolf and Dull Knife, began to express their dissatisfaction with their new agency, and their unwavering desire to return home. Miles refused to let them go.

The strange diseases of measles and malaria plagued the new arrivals, while at the same time they realized the agency’s already skimpy food supply had been overburdened by their presence. Because of their added numbers, medication quickly became unavailable while the rations were always meager and of poor quality. To make matters worse, Miles often withheld the rations as punishment when they refused to take up farming or to send their children to

the agency school. In addition, many of their southern relatives had begun to harass them. Some wanted them to cooperate more with the agent and his helpers, while others simply resented their presence, often chiding them openly and telling them to leave. Some of the Southern People called them Sioux because they had arrived wearing hides and feathers, while the Southern Tribes had adopted the clothing worn by whites. During their time at the Southern Agency, nearly 50 of the northerners died of terrible illnesses and simple starvation.⁵³ For many of the Northern People, being in the south was akin to being in prison.

AGREEMENT OF 1877

The following description is critical to understanding the Treaty/Agreement of 1877 and the status of the Cheyenne following removal. Please note that the term “Agreement” has now replaced “Treaty” since the treaty era officially ended in 1871. If we note the dates that the Agreement of 1877 was negotiated, it was in September of 1877. Most of the Cheyenne had been forcibly removed around the end of May 1877. The Cheyenne could not possibly have signed this agreement, since they had already been moved to Oklahoma. In addition, recall that Article 8 of the Fort Laramie Treaty of 1868 required the majority of the adults to approve any modification. The following is the text of the Agreement of 1877:

Agreement of 1877.

Forty-Fourth Congress Sess. II

Feb. 28, 1877

Chap. 72. An act to ratify an agreement with certain bands of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians. Dated and signed at Spotted Tail Agency, Nebraska, September 28, 1877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain agreement made by George W. Manypenny, Henry B. Whipple, Jared W. Daniels, Albert G. Boone, Henry C. Bulis, Newton Edmunds, and Augustine S. Gaylord, commissioners on the part of the United States, with the different bands of the Sioux Nation of Indians, and also the Northern Arapaho and Cheyenne Indians, be, and the same is hereby, ratified and confirmed:

Provided, That nothing in this act shall be construed to authorize the removal of the Sioux Indians to the Indian Territory and the President of the United States is hereby directed to prohibit the removal of any portion of the Sioux Indians to the Indian Territory until the same shall be authorized by an act of Congress hereafter enacted, except article four, except also the following

portion of article six: "And if said Indians shall remove to said Indian Territory as hereinbefore provided, the Government shall erect for each of the principal chiefs a good and comfortable dwelling-house" said article not having been agreed to by the Sioux Nation; said agreement is in words and figures following, namely: "Articles of agreement made pursuant to the provisions of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes," approved August 15, 1876, by and between George W. Manypenny, Henry B. Whipple, Jared W. Daniels, Albert G. Boone, Henry C. Bulis, Newton Edmunds, and Augustine S. Gaylord, commissioners on the part of the United States, and the different bands of the Sioux Nation of Indians, and also the Northern Arapahoes and Cheyennes, by their chiefs and headmen, whose names are hereto subscribed, they being duly authorized to act in the premises.

Article 1. The said parties hereby agree that the northern and western boundaries of the reservation defined by article 2 of the treaty between the United States and different tribes of Sioux Indians, concluded April 29, 1868, and proclaimed February 24, 1869, shall be as follows: The western boundaries shall commence at the intersection of the one hundred and third meridian of longitude with the northern boundary of the State of Nebraska; thence north along said meridian to its intersection with the South Fork of the Cheyenne River; thence down said stream to its junction with the North Fork; thence up the North Fork of said Cheyenne River to the said one hundred and third meridian; thence north along said meridian to the South Branch of Cannon Ball River or Cedar Creek; and the northern boundary of their said reservation shall follow the said South Branch to its intersection with the main Cannon Ball River, and thence down the said main Cannon Ball River to the Missouri River; and the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and Article 16 of said treaty is hereby abrogated.⁵⁴

Article 2. The said Indians also agree and consent that wagon and other roads, not exceeding three in number, may be constructed and maintained, from convenient and accessible points on the Missouri River, through said reservation, to the country lying immediately west thereof, upon such routes as shall be designated by the President of the United States; and they also consent and

agree to the free navigation of the Missouri River.

Article 3. The said Indians also agree that they will hereafter receive all annuities provided by the said treaty of 1868, and all subsistence and supplies which may be provided for them under the present or any future act of Congress, at such points and places on the said reservation, and in the vicinity of the Missouri River,⁵⁵ as the President of the United States shall designate.

Article 4. The Government of the United States and the said Indians, being mutually desirous that the latter shall be located in a country where they may eventually become self-supporting and acquire the arts of civilized life, it is therefore agreed that the said Indians shall select a delegation of five or more chiefs and principal men from each band, who shall, without delay, visit the Indian Territory under the guidance and protection of suitable persons, to be appointed for that purpose by the Department of the Interior, with a view to selecting therein a permanent home for the said Indians. If such delegation shall make a selection which shall be satisfactory to themselves, the people whom they represent, and to the United States, then the said Indians agree that they will remove to the country so selected within one year from this date.⁵⁶ And the said Indians do further agree in all things to submit themselves to such beneficent plans as the Government may provide for them in the selection of a country suitable for a permanent home, where they may live like white men.⁵⁷

Article 5. In consideration of the foregoing cession of territory and rights, and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868. Also to provide the said Indians with subsistence consisting of a ration for each individual of a pound and a half of beef, (or in lieu thereof, one-half pound of bacon,) one-half pound of flour, and one-half pound of corn; and for every one hundred rations, four pounds of coffee, eight pounds of sugar, and three pounds of beans, or in lieu of said articles the equivalent thereof, in the discretion of the Commissioner of Indian Affairs. Such rations, or so much thereof as may be necessary, shall be continued until the Indians are able to support themselves. Rations shall, in all cases, be issued to the head of each separate family; and whenever schools shall have been provided by the Government for said Indians, no rations shall be issued for children between the ages of six and fourteen years (the sick and infirm excepted) unless such children shall regularly

attend school. Whenever the said Indians shall be located upon lands which are suitable for cultivation, rations shall be issued only to the persons and families of those persons who labor, (the aged, sick, and infirm excepted;) and as an incentive to industrious habits the Commissioner of Indian Affairs may provide that such persons be furnished in payment for their labor such other necessary articles as are requisite for civilized life. The Government will aid said Indians as far as possible in finding a market for their surplus productions, and in finding employment, and will purchase such surplus, as far as may be required, for supplying food to those Indians, parties to this agreement, who are unable to sustain themselves; and will also employ Indians, so far as practicable, in the performance of Government work upon their reservation.

Article 6. Whenever the head of a family shall, in good faith, select an allotment of land upon such reservation and engage in the cultivation thereof, the Government shall, with his aid, erect a comfortable house on such allotment; and if said Indians shall remove to said Indian Territory as hereinbefore provided, the Government shall erect for each of the principal chiefs a good and comfortable dwelling-house.⁵⁸

Article 7. To improve the morals and industrious habits of said Indians, it is agreed that the agent, trader, farmer, carpenter, blacksmith, and other artisans employed or permitted to reside within the reservation belonging to the Indians, parties to this agreement, shall be lawfully married and living with their respective families on the reservation; and no person other than an Indian of full blood, whose fitness, morally or otherwise, is not, in the opinion of the Commissioner of Indian Affairs, conducive to the welfare of said Indians, shall receive any benefit from this agreement or former treaties, and may be expelled from the reservation.⁵⁹

Article 8. The provisions of the said treaty of 1868, except as herein modified, shall continue in full force, and, with the provisions of this agreement, shall apply to any country which may hereafter be occupied by the said Indians as a home; and Congress shall, by appropriate legislation, secure to them an orderly government; they shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life.

Article 9. The Indians, parties to this agreement, do hereby solemnly pledge themselves, individually and collectively, to observe each and all of the stipu-

lations herein contained, to select allotments of land as soon as possible after their removal to their permanent home, and to use their best efforts to learn to cultivate the same. And they do solemnly pledge themselves that they will at all times maintain peace with the citizens and Government of the United States; that they will observe the laws thereof and loyally endeavor to fulfill all the obligations assumed by them under the treaty of 1868 and the present agreement, and to this end will, whenever requested by the President of the United States, select so many suitable men from each band to co-operate with him in maintaining order and peace on the reservation as the President may deem necessary, who shall receive such compensation for their services as Congress may provide.

Article 10. In order that the Government may faithfully fulfill the stipulations contained in this agreement, it is mutually agreed that a census of all Indians affected hereby shall be taken in the month of December of each year, and the names of each head of family and adult person registered; said census to be taken in such manner as the Commissioner of Indian Affairs may provide.

Article 11. It is understood that the term reservation herein contained shall be held to apply to any country which shall be selected under the authority of the United States as the future home of said Indians.

This agreement shall not be binding upon either party until it shall have received the approval of the President and Congress of the United States.

Dated and signed at Red Cloud Agency, Nebraska, September 26, 1876.

George W. Manypenny.

J.W. Daniels.

Albert G. Boone.

H.C. Bulis.

Newton Edmunds.

A.S. Gaylord.

Attest: Charles M. Hendley, Secretary

Arapahos

Black Coal, his x mark, seal.

Crazy Bull, his x mark, seal.

Little Wolf, his x mark, seal.
Sharp Nose, his x mark, seal.
Six Feathers, his x mark, seal.
White Horse, his x mark, seal.

Cheyennes

Living Bear, his x mark, seal.
Spotted Elk, his x mark, seal.
Black Bear, his x mark, seal.
urkey Legs, his x mark, seal. Calfskin Shirt, his x mark, seal.

Dated and signed at Spotted Tail Agency, Nebraska, September 28, 1877.

ENDNOTES

1 Roberts, Gary L., 2016, *Massacre at Sand Creek: How the Methodists Were Involved in an American Tragedy*, 223.

2 *Ibid.*, 154.

3 Smiley, Jerome C., Ed., 1901, *History of Denver*, Denver Public Library.

4 S. Rep. No. 142, 1865, Report on the Joint Committee on the Conduct of the War, *Massacre of the Cheyenne Indians*.

5 The Joint Special Committee on the Condition of the Indian Tribes was formed on March 3, 1865, by resolution of both houses of the U.S. Congress for the purpose of “directing an inquiry into the condition of the Indian tribes and their treatment by the civil and military authorities of the United States.”

6 The Joint Special Committee on the Condition of the Indian Tribes issued five recommendations; the second one blamed the Indian wars on “lawless white men.”

7 Roberts, 2016, 196-2002.

8 Personal recollections of author from Louisa Star Nelson in conversations as a child.

9 Powell, Father Peter John, 1979a, *People of the Sacred Mountain: A History of the Northern Cheyenne Chiefs and Warrior Societies 1830-1879. With an Epilogue 1969-1974*, Vol. I, 184.

10 Interview with Bill Tall Bull as told to him by family members. There are other accounts of this in John Stands in Timbers’s book.

11 *Ibid.*, 185.

12 *Ibid.*, 187.

13 *Ibid.*, 189.

14 Grinnell, George Bird, 1915/1956, *The Fighting Cheyennes*, 188.

15 *Ibid.*, 181.

16 *Ibid.*, 188.

17 *Ibid.*, 186.

18 *Ibid.*, 204.

19 *Ibid.*, 205-206.

20 Wyoming History website; Hampton, 8; Coutant, Charles Griffin, 1899/various reprints, Chapter xxxv, in *History of Wyoming from the Earliest Known Discoveries*.

21 *Ibid.*

22 Kappler, Charles J., Ed., Comp., 1904b/1972, *Indian Treaties 1778 to 1883, Treaty with the Sioux—Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee and Arapaho, April 29, 1868*, 998-1007.

23 Author’s note: “[C]ause the offender to be arrested and punished according to the laws of the United States” is an unusual item in a treaty as it allows another sovereign to assume criminal and civil jurisdiction. This the typical kind of deceptive practice found in most treaties.

24 This is an issue because the land set aside by the Medicine Lodge Treaty was under dispute,

and the Southern Tribes moved several times before settling in one place. There was also insufficient land to support an influx of an additional several thousand Cheyenne and Arapahos. The Northern Cheyenne have a legitimate claim for land within the boundary description. The failure to fulfill locating the Northern Cheyenne within the agreed upon locations vacates the forfeiture of their “territory outside of the two reservations mentioned above.”

25 This was a violation of the Treaty of 1868, as the U.S. government did not have the authority to assign land within the boundaries of an existing reservation. In order to have been valid it had to have been reserved in the Fort Laramie Treaty of 1868 with the Sioux Nation. No such article exists.

26 This is very important as it creates a “property right” to pursue buffalo and other game.

27 Article 2 contains the most ambiguous and confusing language, resulting in the Northern Cheyenne having a permanent reservation in 1884. Essentially the Northern Cheyenne were exiled in their homeland for twenty years.

28 History shows us that pursuing farming on the northern plains was the most ridiculous concept and even when tribes showed a preference for cattle ranching, the Bureau of Indian Affairs would seek ways to limit the success of such ventures.

29 Article 3 is a perfect example of how the U.S. government had planned to contain Indians. One sovereign does not dictate policies such as this to another.

30 Education may have been important but what is not included in Article 4 is the implementation policy that violated the First Amendment rights of the Cheyenne and Arapaho by allowing churches to control the assimilation process. In addition, no Cheyenne would have allowed their children to be taken to board schools off reservation.

31 Treaties between sovereigns were never intended to promote assimilation; this is a perverse example of deceit and fraud. The United States government never intended to respect the sovereign states of the Indian Nations and used these treaties as a means to destroy and subjugate the People.

32 “President shall annually detail an officer of the Army to be present and attest the delivery of all the goods... Commissioners.” This was an absolute miserable failure because of the fraud that happened during this time in Indian Country. See H.R. Report 98, 42nd Congress 3rd Session, Investigation of Indian Frauds Vol. 1; 1872.

33 Article 6 continues the intent of domination and subjugation. Why should an “Indian Agent” have power to determine that a Cheyenne “satisfied” his definition of success?

34 This is one of the best arguments that the People did not approve this treaty. Many people today have concluded that the Treaty of 1868 was made by a limited number of People, and none of those had the authority to bind all the People to this treaty.

35 This is a perfect example of how the original narratives of the handwritten transcripts confirm the rejection of the notion of farming, but the creators of the treaty refused to accept it.

36 Hill, Cynthia Gish, 2017, *Webs of Kinship: Family in Northern Cheyenne Nationhood*, 105-107, and Powell, 1979a, 763.

37 Hill, 2017, 105, footnote #72, and Powell, 1979a, 766.

38 Dusenberry, Verne, 1956, *Varying culture of the Northern Cheyenne*, [unpublished master's thesis], 35; The University of Montana.

39 Gray, John S., 1976, *Centennial Campaign, The Sioux War of 1876*, The Old Army Press, 333.

40 Cheyenne, n.d., in Wikipedia. (2023, February 22), <https://en.wikipedia.org/wiki/Cheyenne>

41 Powell, Father Peter John, 1980, *The Cheyennes, Maheoo's People: A Critical Bibliography*, xxviii.

42 Fox, Richard A., 1993, *Archaeology, History, and Custer's Last Battle: The Little Big Horn Reexamined*, 150, 278.

43 *Evening Friends of the Little Big Horn Battlefield, Walk Through History with Richard Fox*, Summer of 2021.

44 Gray, 1976, 333, 350; [estimates that there were approximately 156 Cheyenne lodges at the site; using a calculation of approximately 8 people per lodge, the total would have been 1,208, making it one of the largest gatherings of Cheyenne—even more than at the Little Bighorn.

45 Robinson, Gerry, WYOHHistory.org. website: <https://www.wyohistory.org/>; the quotation is taken from the work of Gerry Robinson with only minor revisions. Gerry Robinson is a writer, historian, and member of the Northern Cheyenne Nation.

46 Grinnell, 1915/1956; for a detailed account of the capture of Dull Knife's village, see Chapter 27, 359-382; see also Powell, 1981, *People of the Sacred Mountain: A History of the Northern Cheyenne Chiefs and Warrior Societies, 1830-1879*, Vol. II, [Hohonaa-veahandhe—Stone Forehead], 1056-1072. I had the honor of visiting the site with Ted Rising Sun and Bill Tall Bull as part of a tour with the Bozeman Trail Association in 1992.

47 Paul, Eli, 1998, *The Nebraska Indian Wars Reader 1865-1877*, 169. See also Buecker, Thomas R., 1994, *The Crazy Horse Surrender Ledger*, 11.

48 Clark, Lieutenant W.P., 1877, *Report, Fort Robinson*.

49 Powell, 1981, 1141.

50 Buecker, Thomas R., 1999, *Fort Robinson and the American West 1874-1899*, 126.

51 Gray, 1976, 351.

52 Grinnell, 1915/1956, 400.

53 *Ibid.*, 400-402.

54 Please note that the hunting rights could not be abrogated without the majority of the adults approving the action. See Article 8, *Fort Laramie Treaty of 1868*; the relinquishing of territory was also invalid.

55 This would have been nearly impossible for the Cheyenne since the majority of them had already been moved to Oklahoma. Surely the treaty commissioners were aware of this at the time of the signing.

56 This could never happen for the Cheyenne as they had already been removed from the area.

57 This is a perfect example of forced assimilation.

58 Here, we see an example of the government's unlawful use of bribery in Indian politics.

59 It is difficult to see and observe the actions of the U.S. government and the lengths to which they went to destroy our way of life. This is compounded by vitriolic actions that continue to the present time.

PART III

The People Go Home *A Departure for the North*

September 9, 1878

“God, These People Die Hard.”
— *Soldier, About Dull Knife’s People*
January 22, 1879

THE NORTHERN CHEYENNE BREAKOUTS OF 1878-79: BACKGROUND AND OVERVIEW

After waging prolonged resistance against the U.S. invasion of their homeland for several years, in warfare marked by the slaughter of perhaps half their number at places such as Sand Creek, the Washita, and Sappa Creek, the Northern Cheyenne surrendered in 1877.¹ The Cheyenne having lost in their determined effort to block conquest of the northern plains, the army promptly force-relocated them from Montana’s Powder River Country to a barren area adjacent to Fort Sill in western Oklahoma. Over the ensuing year, this harsh and alien environment took a drastic toll on the People; as many as one-third of the interned Cheyenne died of disease—primarily dysentery, influenza, and malaria.² Faced with the specter of virtual extermination through such “natural attrition” at Fort Sill, and guided by their warrior chiefs Dull Knife and Little Wolf, the People decided during the late summer of 1878 to return to the healthier clime of the north.³

Consequently, on September 9 of that year, a group of approximately 350 survivors made their break. Ninety-two were men of fighting age, while the remaining 261 were women, children, and elderly.⁴ Each was resolved that it was far better to die trying to return home than to stay and resign themselves to a tragic death from disease or starvation. Various authors have

chronicled this escape and the resultant journey in many versions.⁵ In general, however, all accounts detail an extended running battle occurred between the small group of Cheyenne (men, women, and children) on the one hand and up to 13,000 troops of the United States Army on the other. Several sharp engagements were fought during the 1,000-mile flight to the north (*see map on page 307*). Despite extreme disadvantages in numbers, weaponry, and supplies, the Cheyenne won each round, continuing to elude their pursuers.⁶ By late October, the group had managed to reach the sheltering vastness of the Nebraska Sandhills region and paused to rest and regroup while cavalry units became lost and floundered about in trying to locate them.⁷

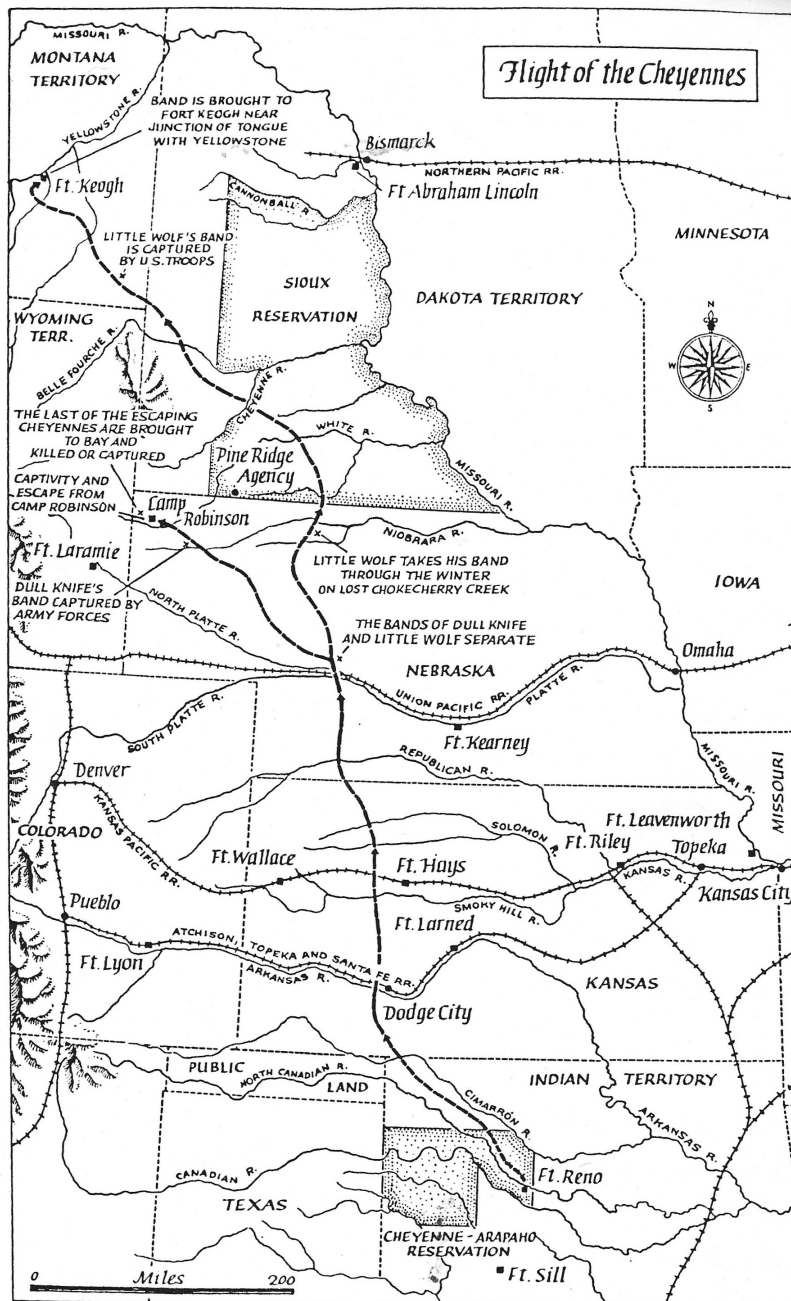
Ultimately, it was not U.S. military action but sheer hunger, exhaustion, and exposure (by now, the high plains winter had set in) that led to a portion of the Cheyenne again surrendering. It was decided that the younger leader, Little Wolf, would take the more able-bodied individuals, including the bulk of the warriors, and continue the trek to Montana.⁸ The aging leader, Dull Knife, along with other elders, primarily women and children, with only a skeleton force of younger men as protection, moved toward the military post at Camp Robinson, Nebraska, intending to find Red Cloud's camp. However, their efforts were halted because on October 23, two troops of the Third Cavalry Regiment, Captain J.B. Johnson commanding, stumbled on Dull Knife's group of Cheyenne.⁹

The Cheyenne were disarmed¹⁰ and then counted, which revealed their number to be 149: 46 men (many of whom were elders), 61 women, and 42 children.¹¹ At this time, the Cheyenne had 131 horses and nine mules, which were also impounded by the cavalry before Dull Knife's group was transported by wagon to Camp Robinson.¹² Once within the camp, they were interned in an empty barracks building and placed under a heavy round-the-clock guard.¹³ As time passed, however, security was somewhat relaxed, and the people were allowed to move about the post and immediately adjacent areas with relative freedom.¹⁴ Rations were also upgraded for the prisoners, mainly through the efforts of Second Lieutenant George Chase, who seems to have purchased extra cornmeal with cash from his own pocket.¹⁵ During this period, the Cheyenne informed Chase that they would "do anything he wanted, except return south [to Oklahoma]," and anticipated they would be released to join Red Cloud's Oglalas or Spotted Tail's Brulés at the nearby Sioux agencies, now known as the Pine Ridge and Rosebud Reservations.¹⁶ Grinnell quotes Dull Knife as saying to Colonel Caleb H. Carlton, commander of the Third Cavalry at Camp Robinson: "We are back on our own ground, and have stopped fighting. We have found the place we started to come to."¹⁷

Unbeknownst to the prisoners, Colonel Carlton had been corresponding with Lieutenant General George "Three Stars" Crook, commander of the Military Department of the Platte, since at least as early as October 31, concerning the return of the escaped Cheyenne to Oklahoma under military escort.¹⁸ Additionally, on November 11, the governor of Kansas demanded that leaders of the group, including Dull Knife, should be turned over to his civil government

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for purposes of a trial on “criminal charges” resulting from the fighting during the Cheyenne’s flight northward.¹⁹ On November 22, both the governor’s request and the plan for a second forced relocation were approved by the commissioner of Indian Affairs;²⁰ this was communicated to Crook on December 20,²¹ and acknowledged on December 24.²² On December 26, the general ordered Captain Henry W. Wessells—who had replaced Carlton as the Third Cavalry commander at Camp Robinson on December 17—to issue winter clothing to the Cheyenne in preparation for their journey.²³ Dull Knife and the others wanted in Kansas were to be shipped by rail to Fort Leavenworth (Kansas), per an instruction from the commissioner of Indian Affairs to Crook on December 16.²⁴



Wessells later testified that on or about December 27, one of the Cheyenne named Bull Hump escaped; the other 148 men, women, and children were then locked up inside the barracks building for 24 hours per day, with their rations reduced by a substantial margin.²⁵ Meanwhile, the weather turned much colder, and Red Cloud and several other Oglala leaders visited the Cheyenne to express their regret that there was nothing they could do to intervene in the fate of their friends and allies.²⁶ At this juncture, Dull Knife, one of the Cheyenne leaders, made a last attempt at persuasion. Speaking to Wessells, he said:

Tell the Great Father that Dull Knife and his people ask only to end their days here in the north where they were born. Tell him we want no more war. We cannot live in the south; there is no game. Here, when rations are short, we can hunt. Tell him if he lets us stay here, Dull Knife's people will hurt no one. Tell him if he tries to send us back, we will butcher each other with our own knives.²⁷

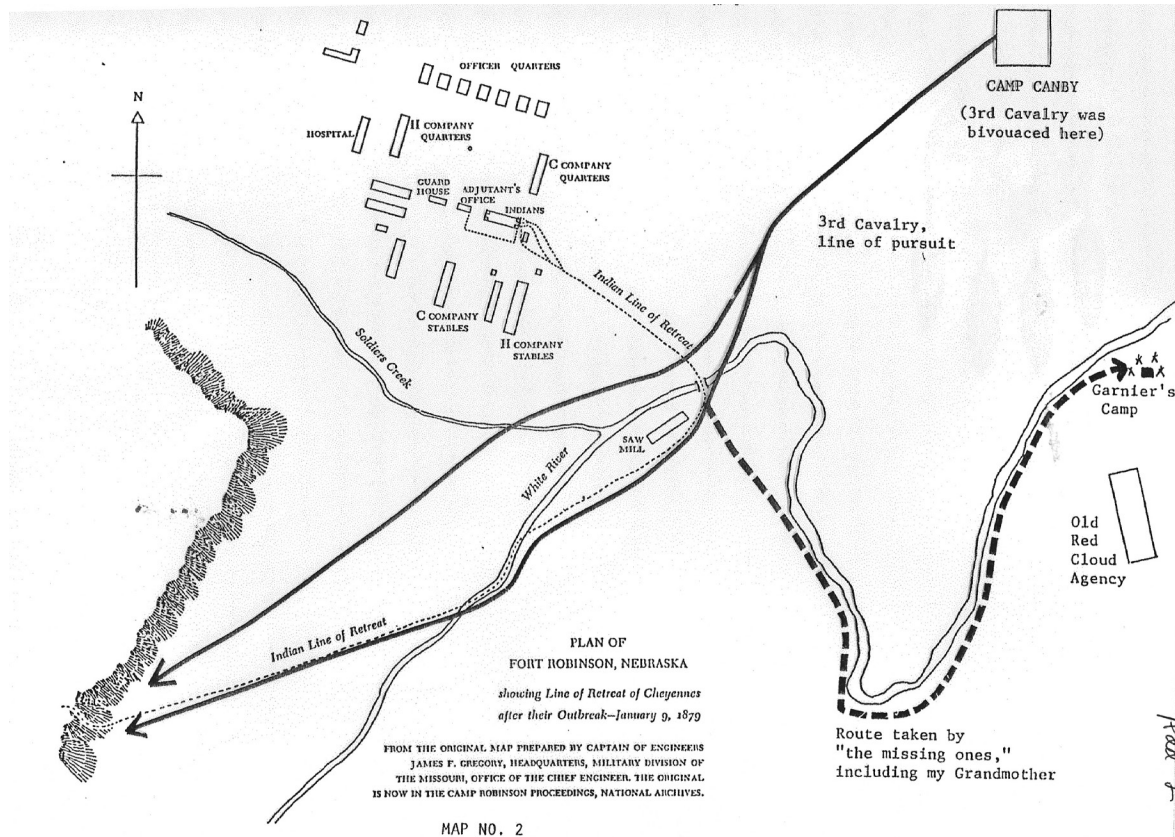
On January 3, 1879, Wessells finally got around to officially informing his prisoners of the decisions made in their regard the month before, giving them “one day in which to think about the matter.”²⁸ The Cheyenne response, tendered by a leader named Wild Hog on January 4, was a flat no: “they would do anything else... but they would not go south, he said.”²⁹ Wessells immediately began attempting to “change their minds” by cutting off their food and firewood, escalating on January 8 to cutting off their water.³⁰ Such methods, employed during subzero weather, were continued for eight days.³¹ On January 9, feeling that Wild Hog was perhaps the major “recalcitrant,” Wessells separated him from the group and threw him in irons.³²

As it grew dark on the latter day at approximately 5:00 p.m., the prisoners began to remove the few weapons they had managed to secrete from the troops from hiding places beneath the floor of the barracks.³³ At about 10:00 p.m. that evening, the 130 Cheyenne who were still capable of mobility broke through the windows of the barracks building, overpowered the squad of men guarding them, paused to capture four of them with their own guns, and fled out upon the snow-covered landscape.³⁴ The temperature was at or below zero, but “[t]he people were looking for death; hence they took few precautions against the bitter cold.”³⁵ Their escape route (*see map on page 309*) was at first southeasterly, across the White River; then, doubling back southwesterly across the river again, toward the possible sanctuary offered by a line of covered bluffs. The overall distance involved was some five miles. The deep desperation of the prisoners was evident in the fact that they opted to make their break on the night of a full moon.

The Cheyenne incurred casualties even before clearing the perimeter of Camp Robinson. Five Dog Soldier warrior society members, including their leader, an Oglala named Tangle Hair, covered the main body of escaping people with carbines; four were killed, and Tangle

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Hair was severely wounded.³⁶ An elder named Old Sitting Man was wounded in the leg and then apparently executed at point-blank range by a trooper.³⁷ A further nine men were killed and perhaps 20 wounded before reaching the White River, their weapons picked up and used by women and boys as best they could.³⁸ A few more men—perhaps five—and a woman attempted to make a stand as rearguard at the sawmill just across the river, trying to delay Captain P.D. Vroom's pursuing cavalry long enough for the remaining people to gain distance; all were killed after a brief firefight.³⁹ Half the fighting men were lost in the first half-mile.⁴⁰



As the leading group attempted to recross the river, several people fell through the ice, soaking themselves and becoming subject to rapid freezing.⁴¹ The remainder scattered, attempting to confuse the troops, the stronger ones running toward the bluffs, the weaker trying to hide in the leafless scrub brush along the river bottoms.⁴² Under the clear moonlight reflecting off an unbroken snowscape, the troops simply rode people down, shooting them and leaving them to freeze where they fell, “so thick for a long way that one could leap from one body to another.”⁴³ Shortly afterward, area settler civilians, such as J.W. Dear, a trader, came following along behind the soldiers, apparently executing wounded Cheyenne where they lay. Women were found with their dresses pulled up over their heads, sticks violating their private parts.⁴⁴

Others, such as Henry Clifford, seem to have preferred scalping and mutilating the bodies.⁴⁵ The following morning, Wessells telegraphed Crook that “about 30” Cheyenne had been killed and another 35 had been recaptured;⁴⁶ more than 20 of these last were severely wounded.⁴⁷ The captain expected, “We will have many more before dark as the trailing is good and five companies are out.”⁴⁸

With troops and civilians gunning down armed and unarmed Cheyenne of all ages and genders as they struggled through the snow, it is doubtful that the initial body count was accurate or that anywhere near half the fleeing prisoners reached the sheltering timber of the bluffs.⁴⁹ Those who did gained access to the summit via an opening in “a perpendicular rock some seventy-five feet high,” which ethnohistorian Peter Powell describes this way: “hidden in an angle of the cliff was a slope that the fleeing people could climb on foot.”⁵⁰ (*See photo below.*) Wessells observed this while his men were fighting the last of the Cheyenne rearguards covering the People’s line of retreat at the base of the bluffs. It was during this rearguard action that Dull Knife’s youngest daughter, the Princess, (another of his daughters was also wounded about this time) was killed by the soldiers.⁵¹ And it was toward this particular rock opening that the captain directed his pursuing cavalry on the morning of January 10th.⁵²



To a certain extent, Wessells made good on his promise to Crook that the Third Cavalry would “have many more before dark.” Using his troops to create broad sweeps along the general escape route and following his Sioux scouts headed by Woman’s Dress, an Oglala, the captain could track a sizable group of “thirty, maybe thirty-five, mostly women and small ones” for nearly eighteen miles through the snow above the bluffs.⁵³ They found the exhausted and starving people resting on a brush-covered hillside, and, in the sharp exchange which followed, one trooper was seriously wounded.⁵⁴ As it was growing dark again, Wessells withdrew his men, allowing the Cheyenne to escape again and acquire some badly needed horse-meat from dead animals.⁵⁵ En route back to Camp Robinson, however, the men assisted in killing four warriors who had finally been run to ground and captured a fifth group member (Pumpkin Seed’s son, a boy of about thirteen).⁵⁶ Earlier in the day, a detail led by Second Lieutenant George Baxter and reinforced by Captain Joseph Lawson’s H Troop managed to trap a sixty-year-old man who had tired and fallen behind the others. The Cheyenne man refused to surrender and badly wounded another trooper before being killed by four body wounds and a point-blank shot to the head.⁵⁷ Lawson’s men had also captured a seven-year-old girl earlier in the afternoon, bringing the day’s tally to seven Cheyenne.⁵⁸

On the 11th, despite occasional exchanges of shots in which Captain P.D. Vroom of L Troop had his horse shot from under him and one Cheyenne man was killed, the best Wessells could contend was that he had managed to harry the refugees, denying them both rest and horses. He also instituted a policy of burning dead cavalry mounts where they fell to deny food to his quarry. For their part, the remaining Cheyenne moved steadily toward the Red Cloud Agency at Pine Ridge, apparently still hoping to secure sanctuary among the Oglala; the only deviations in their course were dictated by the need to follow the natural cover of the terrain.⁵⁹ This pattern remained unbroken for several days, with the exception that, on the 13th, Wessells—believing he had trapped the leading group in a ravine—brought up a Napoleon gun with which to bombard them. After lobbing in “forty or fifty shells,” the troops ran out of ammunition and whatever Cheyenne were there escaped again.⁶⁰

On the 16th, as Powell tells it:

Wessells sent Woman’s Dress and the mixed-blood John Shangreau to ride in front of the soldiers. These were dangerous men, men who knew the people far better than did the soldier chiefs. Nineteen men remained among the fleeing Cheyenne, nineteen men including the boys. There were fifteen women and children... there remained only the young men... Little Finger Nail, Roman Nose [not the famous leader of the Elk Society killed at Beecher’s Island in 1857], Young Magpie, Young Medicine Man, Pug Nose the Southerner, and Bear.⁶¹

Woman's Dress and Shangreau were able to locate the Cheyenne, and the latter killed Pug Nose, who was attempting to parley with the scouts.⁶² In the ensuing firefight, one trooper was killed and a Cheyenne woman and child were wounded.⁶³ The troops again withdrew, leaving a few weapons and some ammunition behind, allowing the Cheyenne to replenish their all-but-depleted stocks before they abandoned the field.⁶⁴ Wessells' inability to bring the matter to a close caused him to be replaced as commander in the field by Major A.W. Evans (sent for this purpose from Fort Laramie, Wyoming); the major, bringing in two fresh troops of the Third Cavalry when he came, assumed command on the 18th.⁶⁵ On the 19th, Shangreau was again able to locate the Cheyenne, but after another skirmish, they escaped.⁶⁶

On the thirteenth day of the pursuit, January 22, Shangreau and Woman's Dress were finally able to locate the main body of the People in a position where they—being utterly exhausted by now—could be genuinely trapped. This was a washed-out hole “about fifty feet long, twelve feet wide, and five feet deep,” some 35 miles north-northwest of Camp Robinson.⁶⁷ Beginning at 7:00 a.m. on that day, the troops began to move in, dismounting and firing from cover. The fighting lasted the better part of the day, during which Wessells was shot in the head, and all the Cheyenne men were killed.⁶⁸ Things ended up, in mid-afternoon, with the troops pouring mass fire into the Cheyenne position at point-blank range:

At a sharp command, the troops charged the breastworks, firing a volley of a hundred shots down into the Indians, jumping back to reload, and up again, the guns roaring. Finally, they withdrew from the blinding, stinking powder smoke and watched it drift away from the hole as from a great fire burning.⁶⁹

This last action had killed four women and two small children and had wounded all the survivors.⁷⁰ Lieutenant J.F. Cummings, in another somewhat low estimate of Cheyenne casualties, made a “final tally” back at Camp Robinson that evening—“Total killed and died of wounds: 39 men and 22 women and children.”⁷¹ In the end, the army listed the Cheyenne death count as 64, with an additional 78 captured and in confinement. Seven—Morning Star (Dull Knife) and most of his family—were listed as “unaccounted for” and believed dead. Total military casualties were recorded as 11 dead and ten wounded.⁷²

In the aftermath of the 1879 Camp Robinson breakout, it was discovered how very few men of the Dull Knife band remained alive: Wild Hog, Old Crow, Left Hand, and Porcupine had been separated from the group and placed in irons before the breakout; Tangle Hair, Noisy Walker (also called Old Man), Blacksmith, The Sioux, and Young Stub Foot had been non-fatally wounded and recaptured during the breakout itself.⁷³ Of these, Wild Hog, Tangle Hair, Left Hand, Old Crow, Porcupine, Blacksmith, and Noisy Walker were shipped to Leavenworth in early February for the trial earlier demanded by the governor of Kansas. All were ultimately acquitted of any criminal actions, but they were then returned to Fort Sill, Oklahoma.⁷⁴ Mean-

while, the facts surrounding the breakout gained fairly broad public exposure.⁷⁵ As a result, the remnants of the Cheyenne at Camp Robinson—still steadfastly refusing to return south—were finally allowed to join Red Cloud's Oglala at Pine Ridge, the outcome they had requested all along.⁷⁶

As for Dull Knife himself, he and four of his immediate party reached Pine Ridge on their own, having traveled cross-country for eighteen days after the breakout.⁷⁷ He lived among the Oglala in a lodge prepared for him along Wounded Knee Creek for approximately a year before General Nelson A. Miles personally intervened to allow him to return to the Powder River Country he had fought so hard to reach.⁷⁸

The breakouts of 1878-79 had achieved one accomplishment: they had forced the U.S. Congress to establish a reservation in Montana. Once reunited with the Little Wolf people who had reached the area on their own in 1879, and with other Northern Cheyenne slowly trickling onto the Montana reservation, the great leader Dull Knife died in 1883. His body was buried in the traditional way on a hill along Rosebud Creek, where he and Crazy Horse had defeated General Alfred Terry's men seven years before.⁷⁹ Today's Northern Cheyenne Reservation is the legacy of this struggle. This tragedy is one of the saddest events in the history of America. The People only wanted to go home and be free.

ENDNOTES

1 Perhaps the best overall account of the type of warfare transpiring on the Plains between 1850 and 1877 may be found in Brown, Dee, 1970, *Bury My Heart at Wounded Knee: An Indian History of the American West*, Holt, Rinehart and Winston. For a Cheyenne-specific rendering, see Grinnell, George Bird, 1956, *The Fighting Cheyennes*, University of Oklahoma Press. A thoroughgoing case study of the military practice of exterminating the Cheyennes is found in Hoig, Stan, 1961, *The Sand Creek Massacre*, University of Oklahoma Press.

2 Sandoz, Mari, 1964, *Cheyenne Autumn*, Avon Books, 27-28; [describes the situation this way: “The Northern Cheyenne shaking with malaria, and there was none of the bitter white powder the agent had promised. There was dysentery too... The people were sick... with someone carried to the burial rocks every day.” In *The Fighting Cheyennes*, 400, Grinnell notes “Almost as soon as they arrived, when they had been in camp but a very few days, they began to be stricken with fever (malaria) and ague (influenza). Nearly two-thirds of the camp’s 999 (Northern Cheyenne) were sickened within two months of their arrival. Every lodge held one or more sick people. During that winter, 41 died of sickness.” Cheyenne sources put the death figure much higher.

3 Sandoz, 1964, 28, sums up the Cheyenne feeling: “They longed for their mountain and pine country where there was no sickness, and few died.” At 401, Grinnell, 1956, quotes the Cheyenne leader Little Chief, in his testimony before a Congressional Committee in 1878, as saying, “A great many have been sick; some have died. I have been sick a great deal of the time since I’ve been down here—homesick and heartsick and sick in every way. I have been thinking of my native country and the good home I had up there, where I was never hungry... It makes me sick when I think about that, and I can’t help thinking about that.” On 30, Sandoz describes other Cheyenne grievances as being, “peaceful people shot by soldiers, the buffalo destroyed, the lands were taken, with too little of the pay promised in the white papers, and now nothing at all. No food, no houses, no cattle or wagons or plows. So, they were going back north while some were still alive.”

4 Gerry Robinson, with the author’s permission: the quoted text is taken from the work of Gerry Robinson with only minor revisions. Gerry Robinson is a writer, historian, and member of the Northern Cheyenne Nation. The entire work can be found at WYOHISTORY.ORG, <https://www.wyohistory.org/>. Gerry Robinson graciously granted permission to use his work.

5 Sandoz, Grinnell, and Brown are, of course, excellent examples. In addition, see Andrist, Ralph K., 1964, *The Long Death: The Last Days of the Plains Indians*, Collier Books.

6 Andrist, 1964, observes on 321 that “General Sheridan’s entire Division of the Missouri hastily mobilized its manpower to block the northward march of the Cheyenne. Nevertheless, the Indians crossed the Atchison, Topeka & Santa Fe (railroad), they crossed the Kansas Pacific, and at last, crossed the Union Pacific, where troops were spread out to snare them but were unable to prevent their slipping through.” The author also notes on the same page that

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“They (the Cheyenne) fought four battles of importance (along the way), beating off the troops and suffering only six killed...” Sandoz, 1964, provides considerable details of the fighting and, on 147, puts the number of troops in the field against the Cheyenne at 13,000. On 156, she notes that, even with this force available, the army still sought more of an advantage: “[A]s far away as California and Florida, troops were entraining against the Cheyenne... and every man between Utah and St. Paul was hitting the field.”

7 Sandoz, 1964, describes this situation on 156-162, focusing her attention upon a special unit of mounted infantry under command of a Major Thornburgh, hand-picked to run the Cheyenne to ground in the Sand Hills. As Sandoz tells it (on 158), by the end of the first week of pursuit, “Thornburgh led his bearding men on, less in pursuit of Indians now than to get through, out. Their rations were gone, the ammunition only what each man carried...” On 160, she quotes Thornburgh as stating to a courier, “We’re reduced to a fresh game, and everybody’s so loose bowelled that the saddles are empty much of the time. We needhardtack...” On the same page, she raises the troops’ rhetorical question: “Where are the Cheyenne?” Despite the intensity of the search, the validity of this question is readily borne out by the fact that Little Wolf and his followers were able to spend the entire winter of 1878-79 in hiding, more or less at a single location along the Chokecherry Creek (see map). On 162, Sandoz completes the narrative of her example-unit’s harrowing odyssey: “Thornburgh reached Fort [sic: Camp] Robinson under the White River Bluffs ten days after he left the Platte, his horses so played out it took him two days to make the 45 miles from Camp Sheridan.”

8 As Andrist, 1964, puts it on 329-330, “Little Wolf and his band remained in their winter camp on the stream named Lost Chokecherry in Nebraska’s Sand Hills... somehow the troops endlessly patrolling the great reaches of prairie never came upon them... In March, they started on their way again, and on the twenty-fifth of the month, when they were just west of the headwaters of the Little Missouri River in the extreme southeastern corner of Montana Territory, the band, 112 strong, met strong cavalry forces under Lieutenant W.P. Clark. It was not a surprise meeting... They were permitted to remain where they were; later, the Tongue River Reservation (in the Powder River Country) was established for all Northern Cheyenne...”

9 Andrist, 1964, 321-323.

10 Powell, Peter J., 1969, *Sweet Medicine: The Continuing Role of the Sacred Arrows, the Sun Dance, and the Sacred Buffalo Hat in Northern Cheyenne History*, Vol. 1, University of Oklahoma Press, 217.

11 Ibid.

12 Ibid., p. 218.

13 Ibid., pp. 222-223.

14 Ibid., p. 224.

15 Ibid., p. 225.

16 Sandoz, 1964, 214-215.

17 Grinnell, 1956, 417.

18 Brief 9079, Military Division of the Missouri.

19 Brief 9421, Military Division of the Missouri.

20 Brief 9983, Military Division of the Missouri.

21 Brief 10209, Military Division of the Missouri.

22 Brief 10315, Military Division of the Missouri.

23 Brief 10315, Military Division of the Missouri.

24 Brief 9983, Military Division of the Missouri.

25 War Department, 1879, Proceedings of a Board of Officers, convened by virtue of the following special order: Headquarters Department of the Platte, Fort Omaha, Nebraska, January 21, 1879, Special Orders, No. 8, in Records of the U.S. Army Commands, Record Group 98, National Archives, [hereinafter referred to as "Proceedings"], testimony of Captain Henry W. Wessells, 78-79.

26 "Proceedings," 1879, testimony of Red Feather and the Enemy, 14-16.

27 Quoted in Bronson, Edgar Beecher, 1908, Reminiscences of a Ranchman, The McClure Company, 167-68. According to Brief 9095, Military Division of the Missouri, Red Cloud had already warned Wessells, as early as October, that the Cheyenne sentiment against returning to Oklahoma was so strong that they might attempt suicide by a knife rather than face another relocation to the south.

28 Powell, 1969, 231.

29 Ibid.

30 "Proceedings," 1879, Wessells' testimony, 75-76.

31 Powell, 1969, 232, see also Sandoz, 1964, 237-38. Some Cheyenne contend that water and fuel were cut off for the full eight days.

32 Grinnell, 1956, 425-426.

33 In "Proceedings," 1879, 3-4, the Court of Inquiry lists the total inventory of Cheyenne weapons utilized on the night of the breakout, including those taken from guards, as being:

Springfield carbines, .45 caliber, 1873 model: four of these taken from guards.

Springfield carbines, breech-loading Rifle-Muskets, .50 caliber. Sharps carbines, .50 caliber. Sharps rifle. revolvers. With these, there was known to be very little ammunition.

34 Powell, 1969, 240, see also "Proceedings," 1879, 110, testimony of First Lieutenant James F. Simpson lists casualties among the sentries as one private killed, one corporal, and four privates wounded (one mortally; he died later).

35 Powell, 1969, 238.

36 Grinnell, 1956, 426, see also Powell, 1969, 255, where he refers to Tangle Hair as being "the grown man among the wounded" later in the evening, implying clearly that all other wounded men were dead by that point.

37 Grinnell, 1956, 422.

38 Ibid., 422.

39 Powell, 1969, 247—Powell refers to the woman having been killed by six wounds inflicted by an aimed volley of fire.

40 Ibid., 246.

41 Ibid., see also where Sandoz, 1964, states on 250 that the channel was “open at the center” at the point where the Cheyenne recrossed the White River. Most Cheyenne say the ice was only a thin film, too weak to support an adult’s weight in many places.

42 Powell, 1969, 246.

43 Ibid., see also where Sandoz, 1964, states on 250 that the channel was “open at the center” at the point where the Cheyenne recrossed the White River. Most Cheyenne say the ice was only a thin film, too weak to support an adult’s weight in many places.

44 “Proceedings,” 1879, Second Lieutenant J.F. Cummings’ testimony, 169: “As there were no soldiers there, I was convinced that these civilians were killing wounded Indians.” See also Ricker Tablets Vol. 2, 289.

45 Ibid., 167-169: “It is most decidedly my opinion that these two citizens were the men who exposed and mutilated the bodies.” Clifford denied these charges at 161-165.

46 Letters received by the Adjutant General, Roll 449, General Crook to the Adjutant General’s Office, January 10, 1879.

47 “Proceedings,” 1879, 139-140, “List of Indians Wounded.” Among others, the first group of twenty included a five-year-old girl named Buffalo Girl whose femur was shattered by a .50 caliber slug; an unidentified five-year-old girl who died within twelve hours of a close-range gunshot to her left shoulder; an anonymous six-months-old baby, who died within two days, suffering from a thigh shattered by a heavy bullet; a one-year-old baby girl, shot through both thighs, who died within 30 hours; an orphan of six, Lame Girl, already wounded in the foot during the journey north, who was shot through the lung but miraculously survived; and a sixteen-year-old boy named Stub Foot who was shot twice in the arm and once in the thigh. Among the female wounded, Short Woman had been riddled, with bullets through the right hand and in her chest, back, head, and thigh; a bullet had destroyed Medicine Woman’s right eye, and another had struck her in the back of the head. White Antelope and his wife were not counted as wounded, as their multiple self-inflicted stab wounds (administered after both were badly wounded by gunfire) were so severe that they died almost immediately. The list also provides an indication that the troops were shooting virtually any Indian who moved, as is evidenced by the fact that Bridge, an elderly Arikara doctor who had long assisted post-surgeon Mosely, was among the early fatalities.

48 Letters received by the Adjutant General, 1879, Roll 449.

49 Grinnell, 1956, 423, says that the burial detail on the morning of the 10th found “about fifty”—rather than Wessells’ thirty—dead Cheyenne. Cheyenne’s accounts concur more

closely with Grinnell.

50 Powell, 1969, 249, both descriptions.

51 Bronson, 1908, 184, offers a more-or-less firsthand account of the Princess' death as a member of the Cheyenne rearguard.

52 Powell, 1969, 255: "Wessells had ordered L Company [sic: Troop] of the Third Cavalry to ride up Hat Creek Road. A Company rode up the Sidney Road and through the bluffs behind Robinson. Company C [with which Wessells himself eventually rode that day] was to follow one of the Cheyenne trails the soldiers had already discovered. Company H rode out in the direction of Crow Butte, following the right bank of the river. Then they cut through the bluffs to the country of the Running Water [Niobrara River] and White Rivers. E Company rode up White River. To the fleeing Cheyenne, there seemed to be soldiers everywhere" on January 10th.

53 Woman's Dress, quoted in Sandoz, 1964, 258. See also distance estimated in Powell, 1969, 256.

54 Ibid.

55 Ibid.

56 Grinnell, 1956, 423-424.

57 "Proceedings," 1879, testimony of Second Lieutenant George Baxter, 130-131. This is also mentioned in Bronson, 1908, 187-92.

58 Powell, 1969, 259.

59 The best-written account of these days is in Sandoz, 1964, 265-277.

60 "Proceedings," 1879, testimony of Second Lieutenant J.F. Cummings, 36-37, testimony of Second Lieutenant George Baxter, 131.

61 Powell, 1969, 263.

62 Ibid.

63 Sandoz, 1964, 229, see also "Proceedings," 1879, 36, where Lieutenant J.F. Cummings states in his testimony that one Cheyenne man and one woman were killed in this engagement. Cheyenne accounts say only Pug Nose was killed; the woman was wounded.

64 Powell, 1969, 263; Sandoz, 1964, 281, itemizes this as amounting to a rifle, a revolver, and a single bandolier of ammunition.

65 Powell, 1969, 264.

66 Ibid., 264-265.

67 Ibid., 267; Sandoz, 1964, 282, points out that the washout was "far out from the bluffs on the north side of a dry creek that was sometimes called the Warbonnet," and that the Cheyenne position was "30 feet above the creek bed." All parties agree that a large prairie dog village surrounded this spot and that Shangreau was able to track the Cheyenne easily through the soft earth of the prairie dogs' diggings.

68 "Proceedings," 1879, testimony of Acting Assistant Surgeon C.V. Pettys, 138: all the young

men in the position were killed, actually all the males but one (who was mortally wounded and died later). Pettys lists the number involved as being 17.

69 Sandoz, 1964, 286. In his “Proceedings” testimony, 1879, 38, Second Lieutenant J.F. Cummings indicated that the last two Cheyenne men charged the troops immediately after the volleys were fired and were essentially shot to pieces. Bronson, 1908, 196, states there were three Cheyenne who did this. Sandoz, 1964, 236-237, concurs with Bronson (and with Cheyenne oral history) and gives their names as Little Finger Nail, Roman Nose, and Bear. Powell, 1969, 269, who relied on Cheyenne accounts, also gives the number as being three.

70 Sandoz, 1964, 286.

71 Cummings’ journal quoted in Powell, 1969, 270.

72 These figures are taken from the summary of “Proceedings,” 1879.

73 Powell, 1969, 272-73.

74 According to the 18th Biennial Report of the Kansas State Historical Society, 1910-1912, [Lawrence, 1910-1911], all seven Cheyenne were acquitted for “lack of evidence.” Powell, 1969, 273-274, describes how Wild Hog and his wife, upon learning that he was to be sent south, attempted to stab themselves to death (both survived). Sandoz, 1964, 270, says he was eventually allowed to return north from Oklahoma with Little Chief’s people in October 1881. However, the roll of the Little Chief group of about eighty repatriated Northern Cheyenne does not include Wild Hog, although Tangle Hair’s name does appear as being a member of this group. It is possible that Wild Hog was shipped to Pine Ridge along with Standing Elk’s group, again numbering about eighty, in early 1882. In either event, he is known—by Cheyenne sources—to have been among the Northern Cheyenne living on Pine Ridge by the middle of the latter year. He died on Pine Ridge at some point between June 1889 and July 1890, by which time all Northern Cheyenne exiled to Oklahoma had been allowed to return north.

75 See, for example, the Chicago Tribune, February 6, 1879, and February 11, 1879.

76 Powell, 1969, 273, puts the number of those sent to Pine Ridge, at Red Cloud’s request, at “forty-eight women and children and a few old ones—about fifty-eight in all.” This was on January 31, 1879.

77 Ibid., 1969, 275-276—Powell recounts how one of three Dog Soldiers who had accompanied Dull Knife’s little group as security, Little Hump, and his sister had been killed fighting a rearguard action at the same point where the Princess was killed (the first night). He also explains that a second Dog Soldier, Great Eyes, was killed in much the same fashion a couple of days later. Sandoz, 1964, 295-98, details how the group finally reached Pine Ridge, traveling the sixty-five miles at night and subsisting on roots, prairie rose buds and rose hips, a pair of rabbits, some sinew and, finally, their moccasin tops. A young boy named Red Bird, badly wounded on the first night, also had to be abandoned in a cave along the way. He survived, hobbling into Pine Ridge some weeks later under his own power.

78 Powell, 1969, 276.

79 George Bird Grinnell later had the bodies of both Dull Knife and Little Wolf re-interred in “proper graves.” They now lie side by side in the Lane Deer Cemetery near the Custer Battlefield.

Part IV

The Legal History of the Northern Cheyenne 1879 - 2020

PRE-RESERVATION ERA

The permanent settlement for the People in the north began when those domiciled at Fort Keogh (present-day Miles City, Montana), under the supervision of Colonel Nelson Miles, were allowed to stay in the north. In 1880, the number of Cheyenne was increasing, and Miles decided to move the Cheyenne to the Tongue River area. Many of the Cheyenne who had settled at Fort Keogh worked with the army as scouts. Fort Keogh became a staging and gathering point for many Northern Cheyenne.

NORTHERN CHEYENNE INDIAN RESERVATION

On November 26th, 1884, an executive order officially created the Northern Cheyenne Reservation. After twenty years of being exiled from their land, the Northern Cheyenne finally had a home in the north. However, the governmental action of creating an “executive order” to establish a reservation for the Cheyenne is questionable from a legal perspective. The Treaties of 1865, 1868, and the Agreement of 1877 (which no Northern Cheyenne leader legally signed) all confirmed that the Cheyenne were to have their reservation in the north on land they legally possessed. It is difficult to determine how the U.S. government decided on this action. Did the Cheyenne honestly give up their rights to land in the north?

The Tongue River Indian Reservation, later known as the Northern Cheyenne Indian Reservation, had 371,200 acres. The reservation boundaries excluded the families of other Cheyenne who had homesteaded near the Tongue River. On March 19, 1900, President William

McKinley extended the reservation to the west bank of the Tongue River, increasing the size of the reservation to 444,157 acres. Those who had homesteaded east of the Tongue River were relocated to the west of the river. This action caused considerable concern as white people had already homesteaded most of the area.

ASSAULT ON THE CHEYENNE CONTINUES

As part of the United States strategy to “civilize Indians,” the government allowed different Christian denominations to direct the civilization process for the Cheyenne, beginning with the Ursuline nuns.

In 1883, Mother Amadeus, with six Ursulines from Toledo, Ohio, founded the convent at Miles City, Montana. These Ursulines conduct one school at St. Labre’s mission among the Cheyenne Indians and one at St. Peter’s mission among the Blackfeet tribe of Indians. Both of these last-mentioned houses are dependent upon the mother convent at Miles City. The combined communities governed by Mother Amadeus number fifteen religious. Their missionary work has affected [*sic*] much good in Montana.¹

The indoctrination and Christianizing of the Cheyenne and others were a priority of the U.S. government’s Indian peace policies created in the 1860s and continue to have an impact today. The United States governmental policy’s direct action violated the U.S. Constitution regarding freedom of religion. In addition, the first clause in the Bill of Rights states that “Congress shall make no law respecting an establishment of religion.” There has never been a suitable explanation of how the rights of Indian People could be brushed aside in favor of trying to assimilate and destroy American Indians.

The intrusion of Euro-American culture would have a profound effect on the Northern Cheyenne religion. This was especially true after the Northern Cheyenne were defeated militarily by the United States. Their reservation on Tongue River was granted to them by Executive Order on 16 November 1884. On the reservation, missionaries were in the vanguard of promoting and bringing forced cultural changes, specifically religious changes to the Cheyenne. The Roman Catholics, and later the Mennonites, would send missionaries among them. These prominent denominations were dedicated to assimilating the Cheyenne. The interaction between the Northern Cheyenne and these religious representatives created cultural conflict, resistance, and changes during their first fifty years on the Tongue River reservation.²

The impact of the policies and practices is quite profound. The combination of government regulations that made Cheyenne's cultural ways and religious practices illegal devastated the Cheyenne.

RELIGIOUS IMPACT ON THE CHEYENNE RESERVATION

During the first fifty years of missionary work—from 1884, when the reservation was established by executive order—to 1934, before the Indian Reorganization Act, the Roman Catholic and Mennonite missionaries attempted to revolutionize Northern Cheyenne culture. These two religious denominations aggressively promoted a message that necessitated the rejection of traditional Northern Cheyenne ceremonies and rituals. They promoted United States government policy and the forced acculturation of the Cheyenne. Many Northern Cheyenne responded by opposing the missionaries' respective messages of faith, and these created periods of intense conflict, further complicating the missionaries' endeavors to convey Christ's message of love. In this respect, the Mennonite and Roman Catholic missionaries partially failed to communicate the spirit and benevolence central to their faiths. This period brought about a drastic transformation of Northern Cheyenne life, trending toward their eventual absorption into the dominant Euroamerican society.³ The Mennonite and Roman Catholic presence became essential in the reservation's Euroamerican and Northern Cheyenne relations. The presence of these denominations would cause conflict and resistance among the Northern Cheyenne.⁴

GOVERNMENT INTRUSION ON THE CHEYENNE

In 1883, the Indian Commissioner, Hiram Price, implemented the "The Court of Indian Offenses"⁵ The court had jurisdiction over "heathenish dances," public intoxication, theft and destruction of property, misdemeanors, the interference of medicine men, polygamy, and any other acts which infringed upon the "civilizing" process.⁶ This action is questionable as at that time the U.S. government had no authority to impose and intrude on the Cheyenne People's right to govern themselves. This was combined with an Indian Office that was incapable of doing a good job in a period of chaos and crisis.⁷

The reason the Indian Bureau attempted to outlaw the practices of the "medicine men" was that many were spiritual leaders. Commissioner Price established these rules and imposed the Court of Offenses to aid reservation agents in abolishing these "evil practices"⁸. This action violated the First Amendment, which states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The U.S. government, through the Bureau of Indian Affairs (BIA), continued its assault on Cheyenne when it created the Cheyenne Court of Indian Offenses, which was organized

in 1889.⁹ The legal basis on which the courts of Indian Offenses rested was highly vague. Punishments were generally administered in the form of a fine or imprisonment. All court decrees were subject to the approval of the agent. The court had no jurisdiction over major crimes committed on the reservation. Like the Cheyenne police force, the Court of Indian Offenses was accountable to the agent, who was appointed by the Bureau of Indian Affairs with no input from the Cheyenne. The court enforced the laws of Euroamerican society. The agents for the Tongue River used the Indian Police and the Court of Indian Offenses to ensure compliance with government assimilation policies. During their reservation confinement, the political authority of the Cheyenne Council of 44 lost its significant decision-making power to the Indian agent. The agent and Indian Bureau made all the decisions affecting the Cheyenne, their daily lives, and their future. Even though they were stripped of their formal powers, the chiefs remained the informal and ceremonial leaders of the Cheyenne People.¹⁰

The judicial powers of the Council of 44 were supposed to be replaced by the Court of Indian Offenses. Despite these attempted takeovers of jurisdiction, the chiefs had covertly, “illegally,” and “immorally” been influencing all decisions up to 1934¹¹. The Northern Cheyenne did their best to maintain a semblance of their pre-reservation organization. The reports of agents and commissioners are full of unappreciative references to the chiefs and male societies.¹²

SUN DANCE WAS BANNED IN 1880

The Sacred Sun Dance drew the disdain of government and BIA officials. They complained that the Sun Dance’s “ritual feature of torture” was heathenistic worship and interfered with the civilization of the Cheyenne. The suppression of the Sun Dance continued for approximately 50 years.¹³ Despite government efforts to eradicate the dance, the Northern Cheyenne held the Sun Dance annually except when they were forcibly prevented from doing so. During the period when it was suppressed and publicly prohibited, the ceremony was performed secretly.¹⁴

For the Christians and government officials, the Sun Dance participants’ practice of self-sacrifice was an act of barbarism. They did not—or chose not—to fully understand the sacredness and meaning of the Sun Dance to the Northern Cheyenne. For the Cheyenne, achieving the desired outcome was a supreme sacrifice.¹⁵

Today the Sun Dance has returned and is practiced by many Cheyenne. At the same time, many Cheyenne follow the ways of the Native American Church. Christianity still has a place on the Cheyenne Reservation and is practiced by many families. One of the unique ways of the Cheyenne People is that they will often practice and participate in more than one religion.

In 1890, the White River Cheyenne, who had been living on or near the White River on the Pine Ridge Lakota Reservation since 1879, were allowed to join their relatives on the North-

ern Cheyenne Reservation. General Miles had suggested this recommendation, but the Bureau of Indian Affairs opposed it. Despite the Bureau's ludicrous opposition, the White River Cheyenne were reunited with their People on their home reservation. Today, those People living around Busby are still known as the White River Cheyenne.¹⁶ However, many of the Northern Cheyenne who had been interacting with the Lakota ("Sioux" is outdated terminology) for many years and had intermarried among them, stayed on the Pine Ridge Reservation.

On September 12, 1890, the Northern Cheyenne's last warlike engagement with the United States military took place on the reservation near the current site of the Dull Knife College. Head Chief, a young man, was accused of killing a white man. Head Chief had refused to surrender to the military authorities and announced his defiance publicly. He made a decree that he was going to die fighting rather than submit to a trial and hanging. A 13-year-old boy named Young Mule would join him in his fight. Head Chief's father begged for clemency and Tribal leaders offered 30 horses to compensate the family of the young man who was killed. The ignorant Indian agent insisted on prosecution, and the Tribal leaders refused to cooperate. This was happening at a time when the Cheyenne People on the reservation had very little to eat. Head Chief's only offense was killing a white man's cow, and when confronted and insulted by another white man, he killed him. The man was illegally on the reservation, and his cows were grazing illegally on Cheyenne land.

That afternoon, First Cavalry Major Henry Carroll sent troops to the reservation to arrest and hang Head Chief. In total, there were about 90 soldiers present. Head Chief wore a warbonnet, and the two warriors charged directly toward the soldiers. The troopers started firing, and Head Chief rode straight in front of the troops. Despite being wounded, he continued his attack and was killed. Young Mule had been shot off his horse and was also killed. They both died in an honorable way. They will always be remembered for their bravery. This will forever be known as the last battle with the white man.¹⁷

Although the Cheyenne now had a home in the North, the attacks on and the suppression of the People did not stop; in many ways, it became more intrusive and misguided.

Over the next several decades, the reservation remained isolated and quiet. In 1904, the first school was established on the reservation at Busby, Montana. Despite the isolation from most of the rest of the world, the Cheyenne were exposed to Spanish influenza in 1918, and many People lost their lives.

TONGUE RIVER AGENCY 1890

In August 1890, Special Indian Agent Walter Shiraw visited the Northern Cheyenne Reservation, Tongue River Agency, Montana. At the time, he noted the size of the reservation and its population. His comments are very interesting and provide an idea of the government's perspective on the Northern Cheyenne at the time:

The unallotted area is 371,200 acres or 680 square miles. It was established, altered, or changed by executive order on November 26, 1884. Indian population 1890: 865.

I visited Tongue River agency in August 1890 and found James A. Cooper, special United States Indian agent, in charge, and was informed that an accurate enumeration of the 865 Indians on the reserve had been made and the acknowledgment of the same, as rendered to the Census Office, duly received. Since then, 39 Pine Ridge Indians have been added to the issue roll by consent of the Commissioner of Indian Affairs.

The Indians are located on the Northern Cheyenne reservation, situated south of the Yellowstone River, on two of its tributaries, Tongue River and Rosebud creek. Their settlements commence about 80 miles south of the mouth of the former and 65 miles south of the mouth of the latter, extending up these streams a distance of 20 miles. Lane Deer and Muddy creeks, tributaries of the Rosebud, have Indian settlements on them extending some 5 miles up each stream. The valleys of these streams are very small when compared to those forming the arable land of the Crow reservation. This has been an excessively dry season, in consequence of which no crops of any description will be raised by the Indians, and little or nothing by the white settlers on these streams, except where irrigated, and this has been done only to a limited extent. The hay crop is only a success to the few having land under irrigation.

These Indians have been located on this so-called reservation for about 6 years. The uncertainty of their position and claims regarding the settlers has seriously retarded their progress. The Cheyenne rank high morally and physically. Their perceptive faculties are largely developed beyond those of the white man, but their reasoning powers are far below.

A promise once made, they demand its fulfillment. Industry and application are unknown to them. The grazing lands are good. The Cheyenne are poor, improvident, and warlike, displaying great courage.

The Cheyenne have 2 schools, a contract and an agency day school. The contract school, under the auspices of the Catholic Indian missions, is located on Tongue River, 20 miles from the agency. It is known as the St. Labre and has buildings ample for the accommodation of its 60 pupils. The teachers are making strong efforts to bring the attendance of pupils up to the required number, which is no easy task. The agency day school was opened on September 1. Every effort will be made by the agent to fill this school to its fullest capacity, which is limited.

The language of the Cheyenne differs but little from that of the Crows, but is much more musically spoken. Their method of courtship and marriage is a matter of barter, and a plurality of wives is allowed.

The Cheyenne is remarkably pure in morals, abortion is unknown, and motherhood is respected. The Cheyenne are rich in superstitions. Faith in the supernatural powers of the medicine man holds with him. The children now being trained in the agency show a strong devotion to Christian forms, but understand no creed.

The sun dance and some other festivities have been prohibited. The dances still permitted form side amusements to pony racing, which is much indulged in by the young men. The Cheyenne are healthy. There are fewer deaths than births. The women are chaste, and from their open-air exercise, free manner of dressing, all garments depending from the shoulders, are free from diseases peculiar to civilization.

Industrial habits are not encouraged. They really have nothing to do, but appear willing and anxious to do something. Drunkenness is unknown. Among themselves they are peaceful, but are hostile to outsiders, and have a special contempt for the Crow, calling him coward and horse thief.

The buildings of the agency are the agent's house, with a separate building as agency office; the schoolhouse (log), 40 by 20 feet, with accommodations for 50 pupils (there are 204 persons of school age); store buildings, a blacksmith and carpenter shop combined, and wagon shed and stabling, also 3 buildings for employees. All of these last named are, like the schoolhouse, built of logs, and \$10,000 would fully cover the value of agency buildings, including the residence of the agent.

The police force consists of 6 trusty Indians, with White Hawk as captain. The "good (?) Indians are employed in government freighting for the agency; they also helped in erecting the agency buildings and 20 log huts for themselves. The rations issued are necessarily considerable on account of the many seasons of drought."¹⁸

Special Indian agent Walter Shiraw's description of the Northern Cheyenne has some merit but lacks information to assess the Cheyennes' condition accurately. There is no information about the quality of the annuities or if there is a suspicion of fraud by the Indian agent. It is commonly known that at this time, most Indian People were living in poverty and, at times, suffered from starvation.

CHEYENNE TRIBE'S EFFORTS TO CLAIM THE BLACK HILLS

Members of the Southern Cheyenne and Northern Cheyenne joined to get recognition of their legitimate claim to the Black Hills and the surrounding lands. The issue goes back to the 1851 Treaty at Fort Laramie, where the Cheyenne and Arapaho were assigned the land south of the North Platte River into Nebraska, Kansas, and Colorado. The Lakota claimed the same area along with the Cheyenne and Arapaho, and Article 5 in the treaty allowed all the nations to continue to use their traditional hunting grounds.

ARTICLE 5 – FORT LARAMIE TREATY OF 1851

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; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

The following explains the Black Hills claim. It was printed in the *Watonga Republican*, the Blaine County newspaper, in 1918:

Statement of Bear Bow.

My name is Bear Bow. I am about 60 years old and a full-blood Cheyenne, and am allotted at the Cheyenne and Arapaho Agency in Oklahoma, where I have lived since my tribe was moved here about 40 years ago. My father was Calf Skin Shirt and signed the Black Hills treaty in 1876, and he was allotted at this agency and died here in Oklahoma in 1891. I was not at the council when the treaty was signed but was in the Cheyenne camp near the agency. My father told me that they made a treaty with the commissioners giving the white people the right to mine gold in the Black Hills for half of the gold mined, but they did not sell the Black Hills. Only the friendly Indians and the men who were in the service of the Army as scouts were at the agency at the time of the treaty (Black Hills) was made. There were forty or fifty tepees. Most of the Cheyenne were hostile and away from the agency. Early next spring, myself and three other Cheyenne were sent out to hunt the Cheyenne and bring them in if we could get them. I was a scout at that time and clear up to the time we were brought to Oklahoma. We found the hostile Cheyennes camped on a large stream east of the Powder River called the Red Paint River.

Only about one-sixth of the Cheyennes were at the treaty making at the agency, the balance being at the hostile camp. Little Wolf and Wild Hog with a

few of the hostiles returned to the agency before I left with the other men to visit the hostile camps. And when we got to the hostile camps the Cheyennes decided to return with us to the agency and we lead them in. The hostiles did not know anything about the making of the Black Hills treaty until they returned to the agency and nothing was said about making the treaty before they left. They did not give the friendly band at the agency authority to make the treaty for them.

Bear Bow (Thumb Mark) Witness to Mark: B. Adams.

I, Robert Burns swear that I understand the English and Cheyenne languages and that I correctly interpreted the foregoing statement to Bear Bow and he understood the same and signed same in my presence. (S) Robert Burns, Interpreter.

Subscribed and sworn to before me this 17th day of July 1918, at El Reno, Oklahoma. My Commission Expires on Sept. 5, 1918. (Seal) J.O. Chamness, Notary Public.¹⁹

There was a claim for the Black Hills filed in 1926 and several others in the following years.

CONFUSING ECONOMIC PROGRAMS

Beginning around 1919, the Bureau of Indian Affairs disrupted the Cheyenne Way by implementing a plan to reduce the number of horses on the reservation. As many as 100 horses were killed monthly, and the owner received a measly \$6.50 per hide. The destruction of the horses violated the Cheyenne in a very personal way. They loved their horses, which had been an intimate part of the Cheyenne Way of Life. This was done simply to increase the opportunity for more cattle ranching. Within five years, the BIA discontinued the tribal cattle herd, which was a dismal failure under its management. By the beginning of 1930, there were only 3,000 horses left from the original herd of 15,000.

THE INDIAN ALLOTMENT ACT

Under tremendous pressure from the Bureau of Indian Affairs, Cheyenne tribal members voted to allot their reservation lands. The number of Cheyenne and enrolled members on the census totaled more than 1,400. Each member was to receive 160 acres of land. In 1936 the Northern Cheyenne approved a tribal constitution under the Indian Reorganization Act (IRA). The vote, which occurred under conditions imposed by the Indian Reorganization Act, was suspicious.²⁰

This may have been a conscious effort to force the assimilation of the Cheyenne. The harm that poor economic planning and implementation caused were painfully evident on other similarly situated northern Plains reservations during this time. It also is evident in the present-day problems where reservation agricultural and other resources needlessly leave the reservation. In contrast, most people on the reservation live below the poverty level.²¹

The Cheyenne voted in favor of allotting the land on the reservation, and it took until 1932 before the process was complete. The allotment system had a problem because there was not enough land for all the people who qualified for allotments. This was exacerbated by the requirement that half of the allotted land be agricultural. In the end, 1,457 Northern Cheyenne enrolled members received 160 acres. The implementation of the allotment plan allowed large numbers of non-Indians to buy and lease lands on the reservation.

CHEYENNE GOVERNANCE

There was pressure from the Commission of Indian Affairs in Washington, D.C. to pass a new form of governance. The Cheyenne reluctantly created the modern government when the Nation adopted the IRA Constitution in 1936. This Constitution was later amended in 1960 and 1996.²²

The Executive Office is filled by a president, vice president, secretary, sergeant-at-arms, and treasurer. The Legislative Office has 10 elected tribal council positions representing five communities, one representative for every 200 enrolled tribal members. The Judicial Branch has two judges elected during a general election.²³ Sheldon C. Spotted Elk explained the nuances of the new government when compared with the traditional form of governance in the following:

The formally elected government of the Northern Cheyenne tribe has from time-to-time encountered great political turmoil because of these conflicting systems. In the initial meeting of the Cheyenne system of law and the American system of law, there has been incongruence based upon fundamentally different values. For instance, under federal law, there is a wall of separation between church and state to prevent the government from establishing a religion. This arrangement created a safeguard against the corruption witnessed in Europe from a church-led state. However, in the Cheyenne system, government and spirituality must be together for tribal harmony and to prevent corruption. The values of the United States and Cheyenne systems also differ in terms of how each handles the relationship between political leadership and military activity. For the Cheyenne system it was necessary to separate political government and military action to safeguard against a conflict of interest between the two.

Conversely, the United States President possesses powers both as a political leader and as the Commander in Chief of the military. These two examples demonstrate ways that the Cheyenne law and government are fundamentally opposed in their cultural values to the political practicality of the law that is set forth in the United States Constitution.²⁴

INDIAN CLAIMS COMMISSION 1940-1964

The conquest of the Cheyenne and their homelands in the nineteenth century marks one of North American history's most overt intentional eradication chapters. Through warfare, disease, treaties, and starvation, the Cheyenne lost their vast territorial domain and the strength of their population. The Cheyenne as a People, however, survived. The history of Cheyenne resistance in twentieth-century attempts to seek justice has been mostly ignored. Northern Cheyenne claims against the United States for land dispossession not only outline the genocidal history of the nineteenth century but trace its malevolent continuities into the present. In this era, the opportunity to correct past wrongs went awry.

DETAILS OF THE INDIAN CLAIMS COMMISSION SETTLEMENT

The Northern Cheyenne's Indian Claims Commission claim was originally filed jointly with the Arapahos of Oklahoma and the Northern Arapahos and Southern Cheyenne. Collectively, they sought retribution for the seizure, with "unconscionable consideration" of their territory guaranteed by the Horse Creek Treaty of 1851. To understand the hollow victory, officially approved by the Indian Claims Commission in 1965, one must appreciate the history and struggle of the Cheyenne Nation since its contact with Euroamerican immigrants and invaders. Although the Nation officially ceded no territory in 1851, the document marks a turning point in the Cheyennes' history.²⁵

THE INDIAN CLAIMS COMMISSION

American Indian claims against U.S. impropriety began long before the enactment of the Indian Claims Commission (ICC) in 1946. Despite needing specific congressional authorization, the Court of Claims heard 152 Indian claims cases between 1884 and 1945.²⁶ The process was cumbersome and inefficient, and the Merriam Report of 1928, while not recommending the establishment of a new government bureaucracy, urged the claims process to be simplified.²⁷ Congress was happy to comply, as the Indian claims process had become an undesirable burden for congressional committees. Between 1931 and 1935, for example, Indian representatives lobbied for the introduction of 96 claims bills, occupying two-thirds of the House

Committee on Indian Affairs' attention.²⁸ Representative Henry Jackson of Washington introduced the ICC Act in the House on October 25, 1945.²⁹

Western historian Wilcomb Washburn writes in his leading essay in *Irredeemable America*, "The persistence of land claims to the present time reflects the willingness of the dominant white majority to accord the Indian minority the right to retain *tribal* identity and authority."³⁰ For Washburn, the ICC was further evidence of the U.S. government's remarkable benevolence toward Native Americans and its policies to support "Indian values and aspirations."³¹ His generous assessment, however, needs a more factual basis in light of the ICC's history and contextual purpose.

The ICC emerged more to facilitate the Republican-originated Termination policy than to rectify any governmental wrongs. Congressional policy to sever Native Peoples from government services and special status through claim settlements, with the cooperation of the Truman and later administrations, has been well documented (*see* Prucha, Deloria, Sutton, Hoebel, and others). A 1946 letter from Secretary of the Interior Julius A. Krug to Budget Director James Webb exemplifies that such Termination was indeed the original and founding purpose of the ICC. Secretary Krug wrote in 1946 urging approval of the bill:

The efforts of the Government to make the Indians a self-supporting and fully assimilated segment of our civilization can never hope for complete success so long as a considerable number of Indian tribes follow the very human and natural inclination to sit back and wait for the day of payment of the claims which will bring them riches. Adjudication of those claims by the Commission which the bill would establish, that once and for all, and would cause the Indians to realize that their further progress will depend upon their own efforts, for the claims which the Indians assert are in nearly all cases grossly exaggerated in size and in many cases wholly without merit.³²

Lawmakers and Commissioners designed the ICC process with this philosophy in mind. The ICC Act, signed by President Truman on August 13, 1946, allowed five types of Indian claims against the United States, including claims under law, tort, fraud, and unfair dealings. Item 4 of Section II allowed for land cession claims by treaty or sale without adequate payment. The bill permitted governmental offsets, both treaty-related and gratuitous, against the claim to be determined by the Commission.³³ These offsets, often including payments never desired by the tribes, significantly reduced ICC awards. The ICC never considered the known fraudulent acts by Indian agents and their cadre of thieves. The act authorized investigations by the ICC but provided no appropriate funding for this purpose. Thus, the ICC became more of a court, relying on the research of opposing attorneys rather than conducting impartial investigations.³⁴ Although the ICC limited attorney compensation to ten percent,

the cases became a multimillion-dollar enterprise for sophisticated law firms.³⁵ The Attorney General defended the United States before the Commission. The Tribe's attorneys had to be approved by the Bureau of Indian Affairs. This created a significant conflict of interest on the part of the government. Hoping to finalize the claims process in one act, Congress gave ICC decisions the same weight as the Court of Claims and provided that "The payment of any claim... shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy."³⁶ This final section proved largely irrelevant as Congress extended the ICC mandate five times until 1978, and the revived Federal Claims Court processes Indian claims today.³⁷

A typical land claims case before the ICC involved five steps: 1) hearing of the claim and recognition of the tribe; 2) proof of occupancy area and transfer date; 3) valuation; 4) determination of allowable government offsets; and 5) final decision.³⁸ If the ICC decided in favor of the petitioner, Congress allocated funds to a treasury account. Following the patronizing legacy of U.S.-Indian relations, Congress, in consultation with the Bureau of Indian Affairs, later stipulated how the money would be spent.

THE NORTHERN CHEYENNE CLAIM

The Northern Cheyenne initiated their land claim against the United States in 1951, alleging that land guaranteed to them by the Horse Creek Treaty of 1851 had been ceded without "conscionable" consideration.³⁹ In cooperation, the Northern Arapaho and the Cheyenne and Arapaho issued an identical claim as a "class" rather than a tribe. The ICC combined the claims and issued a partial judgment allowing further deliberations in 1955.⁴⁰ The Southern Cheyenne entered additional claims regarding the 1891 cession of their Medicine Lodge Creek Treaty lands, which were heard in a separate docket.⁴¹ The Commission determined that the 1851 Horse Creek Treaty lands, which comprise 51,210,000 acres, would serve as the basis for the claim and determined its value to be \$23,500,000. The ICC arbitrarily set October 14, 1865, as the beginning of the time that the claim would commence. Before any final judgment could be reached, William Payne, principal attorney for the tribes, negligently offered a compromise settlement of \$15 million for all of the Oklahoma claims combined. All parties agreed to the amount, and the Commissioners issued their final recommendation to Congress on October 18, 1965.⁴²

The Cheyenne claim followed the typical ICC sequence throughout the process. By the precedent of *Crow Tribe v. the United States* (3 ICC 147), the Cheyenne were automatically a recognized treaty tribe of Indians with their occupancy area proved by the Horse Creek Treaty of 1851.⁴³ Each further step of the ICC valuation process, however, bending to competing lawyer demands, weakened the settlement prospects for the Cheyenne. The attorneys for both parties agreed to the transfer date of the Little Arkansas Treaty of 1865.⁴⁴ In addition to the

historical invalidity of the treaty, the date itself decreased the land's value in two ways. Gold mining and other mineral extraction hit a significant slump in 1865 with the post-Civil War confusion and other factors.⁴⁵ Thus, valuation experts appraised the tract's mineral value as lower than its 1864 or 1866 value. Additionally, the Pacific Railroad system barely penetrated the Horse Creek territory in 1865, but passed through it entirely by the 1870s. This direct channel to the East significantly increased property values upon its completion.

The 1865 valuation was also highly subjective, determined mainly by a compromise between the government and Cheyenne appraisal experts. More than eighty-five percent of the Horse Creek lands are plains, ideal for grazing but ill-suited for extensive agriculture.⁴⁶ The Commission used land-grant and later Railroad land sales to evaluate the overall price. Although prices for similar land associated with the Nolan and Maxwell grants exceeded fifty cents per acre, the ICC determined the value at a much lower value.⁴⁷ The ICC determined an average value of forty-six cents per acre for the entire Horse Creek area, including towns, mineral zones, and agricultural land. Ironically, Denver and the surrounding cities had negotiated to pay \$1.25 an acre in the Fort Wise Treaty of 1861.⁴⁸

The valuation of the most valuable portions of the land was also decreased to accommodate government attorneys. The government's expert, for example, suggested the tract's agricultural property, which often sold for more than \$3.00 per acre in the 1860s, be valued at twenty cents per acre as extensive irrigation had not yet reached the area in 1865.⁴⁹ The ICC used a complex interest and risk formula to compute a likely selling price for the mineral land. Even minor changes in this formula's inputs change the land value by several million dollars.⁵⁰ Finally, the attorneys offered widely divergent estimates of town property value. Boulder, Denver, and Colorado Springs reside in the tract area, but due to the mineral slump of 1865 and war-related disruption, the land prices were relatively low.⁵¹ Despite the plethora of contradictory and complicated calculations and figures in the "Findings of Fact," the ICC provided⁵² no breakdown of its overall calculation. Thus, from the ICC documents, it is impossible to know whether the \$23.5 million price was completely arbitrary or followed some consistent logic.

As offsets for the government, the ICC allowed deductions from the 1861, 1865, 1867, and 1868 U.S.-Cheyenne treaties. Thus, although the land changed hands only once for legal purposes, the government bought the tract four separate times for offset purposes. Consulting Government Accounting Office (GAO) shows that the ICC determined consideration for the Southern Cheyenne-Arapaho to be \$1,434,131.38. The government requested \$7 million more in gratuitous offsets, but the ICC never decided these.⁵³ The final compromise with the Northern Cheyenne set gratuitous offsets and consideration combined at over four million dollars.⁵⁴ While the ICC disallowed many government expenditures, the final offsets for the Northern Cheyenne included money they had never requested nor desired. Deeply hated boarding schools, for example, were considered gratuitous. or treaty-related expenditures by

the Commission and deducted from the final settlement.⁵⁵ The ICC allowance for gratuitous offsets is legally inconsistent with other forms of contract law.⁵⁶

Most damaging to the Cheyenne Tribe's aspirations was the Indian Claims Commission's refusal to pay interest on unconscionably obtained property. Thus the \$23.5 million appraisal of the treaty area could only be settled in 1865 dollars with no allowance for inflation. If the ICC had allowed for inflation and lost investment opportunities at a moderate compounded rate of five percent, the Cheyenne payment would have increased by 130 times the original amount, exceeding \$1.5 billion!⁵⁷

The ICC refused to pay compounding interest from the "time of the taking," which can only be traced back to an overall plan to diminish and eliminate Indians with as little cost as possible. This is a perfect case of "nationalized legal discrimination"⁵⁸ against Indians. This altered practice of failing to comply with the standard rules of a Fifth Amendment taking is perhaps the only time in the history of jurisprudence actions where a party is not allowed to fulfill their expectation of a reasonable settlement. This arbitrary failure to address a standard legal practice was discriminatory and economically harmful to Indian Tribes who sought relief.

It was the practice of the Indian Claims Commission (ICC) to award settlements without interest. By contrast, the Court of Claims has held that Fifth Amendment guarantees require that Indians be paid simple interest on the award amount, as is the practice in other land cases.⁵⁹

As the Cheyenne Nation would be entitled to only twenty-five percent of any settlement, minus offsets, their attorneys sought a simple compromise rather than risk years of further investigation and litigation.⁶⁰ Further investigations and considerations would have included the fraud that was happening to the tribes at that exact time. The offsets should have been reduced by up to 50% because of theft and corruption by Indian agents and their cronies.

The Assistant Attorney General quickly accepted Payne's \$15 million offer conditional on the approval of the BIA and the Cheyenne-Arapaho Tribal Council.⁶¹

Reductions and stipulations associated with the claim continued in Congress. After deductions for their legal teams, the Northern Cheyenne received a credit of less than \$4 million for more than 12,500,000 acres of land!⁶² Even worse, Congress appropriated the money to be allocated per capita rather than in common. The Tribal Council received approximately 2 million dollars for education, scholarships, and other needs. The United States government paid a measly per capita amount of \$1,000 to every Northern Cheyenne in the late 1960s, thus finalizing the land theft that originated in 1851.

Dennis Limberhand, a former tribal council representative of the Northern Cheyenne reservation, explained the details of the ICC settlement. They were supposed to receive \$1,000 per person for every man, woman, and child on the reservation. This did not happen as the Bureau

of Indian Affairs restricted the distribution to \$100 in their typically paternalistic manner. To qualify for the remainder of your money, you needed to develop a plan similar to a business plan. This was problematic for most families as they were unfamiliar with this process. In one case, an individual had devised a plan for twenty-five head of cattle, including resources for fencing material, grazing, watering, and feed. He presented the plan to the three BIA board bureaucrats, who rejected it. They said he would fail because he did not include a bull. Out of frustration, he reportedly said, "I would be my own bull."⁶³

The per capita payments totaled about \$2 million, and the remainder of approximately \$2 million was put into a program that required individuals to solicit their funds from the Bureau of Indian Affairs office. This was evidence of the continued interference by the government in the daily affairs of the Cheyenne. This happened at a time when the Cheyenne were experiencing extreme poverty. The compromise settlement supposedly discharged the United States from "all claims and demands" related to the matter and put history to rest.

To anyone with a morsel of historical consciousness or knowledge of Cheyenne history, however, the payment was a bad punch line to a century-old cruel joke. The Northern Cheyenne "won" their suit with the Indian Claims Commission (ICC) and received 4 million dollars. But the compensation is at best a belated and hypocritical apology, and at worst a cynical preclusion of genuine rectification for 120 years of conquest.⁶⁴

With the accrued interest since 1965, the government issued just over \$1,000.00 to every tribal member over 21. Such small payments spread throughout the reservation did little to alleviate the long-term economic underdevelopment of the Cheyenne. Even the BIA realized the pitfalls of per capita payoffs by 1965, and urged Congress to appropriate three million dollars for "job-creating industries."

BEYOND THE INDIAN CLAIMS COMMISSION

The disappointing history of the Cheyenne ICC case is not the final chapter in the Cheyenne People's legal activism. Since the Nixon administration, the government has been more willing to restore the land to Indian Nations than make transfer payments. The Taos Pueblos, for example, fought in court and the ICC for four decades, but eventually saw a limited section of their sacred lands surrounding Blue Lake returned in 1970.⁶⁵ While re-opening the Horse Creek Case might be impossible, other land options are open to the Cheyenne before the Claims Court.

Non-land reparations cases are another legal possibility. If the intentional slaughter of Plains buffalo could be proven in court, the Cheyennes could bring suit against the govern-

ment for hunting rights violations north of the South Platte River.⁶⁶ Government meddling in successful Cheyenne stock raising at the turn of the century or government misuse of Cheyenne mineral resources could lead to accounting negligence claims.

The legal precedents established in the ICC deliberations could also lead to future claims. By assigning a transfer date of October 1865 for the Horse Creek lands, presumably the Cheyennes maintained title to the land from 1851 until at least 1868 and perhaps longer.

The income produced by the illegal occupation of the invaders in those years, and the fines that should have been collected, should have benefited the Cheyenne People. Steven Douglas remarked in the Senate in 1858, “Every man in Pike’s Peak is there in violation of the law; every man of them has incurred the penalty of \$1,000 fine and six months’ imprisonment for violating the Indian intercourse law.”⁶⁷ These illegal immigrants’ income could bring lucrative compensation to the Cheyenne if favored by the courts. Between 1859 and 1865, mineral profits in the Cheyenne land tract totaled \$15,307,000.⁶⁸ Finally, the Cheyennes could seek reparations for nineteenth-century war crimes and government depredations. The Sand Creek and Fort Robinson Massacres were unprovoked attacks on civilian targets and could form the basis for other suits.⁶⁹

The \$4 million paid to the Cheyenne has a double meaning. In the context of U.S.-Cheyenne relations since 1851, the payment is insulting as an apology. The claim and its history also point to future resistance. The Cheyenne fought against illegal immigration and military attacks, suffered the decimation of the buffalo, and faced impoverishment and coercive assimilation since the reservation period began. The government appropriated their vast territory and divided the Cheyenne bands politically and geographically. These government policies towards the Cheyenne have oscillated considerably in almost 200 years, but have never deviated far from a genocidal outcome. Labeling the relationship otherwise ignores the cultural and physical aspects of conquest. The ICC’s minimal payment for horrendous crimes only perpetuates this legacy.

Ironically, almost all the claims filed in the ICC had to do with land, yet not a single acre of land was returned to the Cheyenne and Arapaho Nations.

The proceedings of the Indian Claims Commission stipulated that the land related to this claim and settlement was related to the Fort Laramie Treaty of 1851. At the time of the hearing, the attorneys for both parties assumed that the Fort Laramie Treaty of 1851 was valid. However, the Fort Laramie Treaty of 1851 was never ratified.⁷⁰ The treaty was originally recorded as being “ratified.” Later when the error was discovered, the treaty was changed in the official documents as being “not ratified.” Most people today still believe the treaty was ratified.⁷¹

In the legal proceedings, using an unratified Treaty should have been deemed “unconscionable”⁷² and not allowed to be used to calculate the settlement of a legal claim, which happened in the Cheyenne and Arapaho case.

It is established in the record of the proceedings that the American Bison, more commonly referred to as the Buffalo, played an essential role in the survival of the Indian Nations. Despite being mentioned, there was no consideration for compensation for the economic loss of Buffalo. This would be the modern-day equivalent of the cattle industry being arbitrarily excluded from agricultural economic calculations. I believe this was unconscionable and created an additional treaty violation.⁷³

Another example missing from the ICC claims is the illegal occupation of the land owned by the Native Nations. It has been reported that between the years 1858 and 1861, up to 100,000 illegal invaders occupied the land owned by the Cheyenne and Arapaho in Colorado. And under the provisions of the Indian Trade and Intercourse Act of 1834, those illegal immigrants should have been fined and removed. The following is the specific language in the Indian Trade and Intercourse Act of 1834, Section 11.

*SEC. 11. And be it further enacted, That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.*⁷⁴

The period for illegal occupation started in 1834 with the Act's passage and continued until the Act was rescinded in 1873.⁷⁵

The other issue from the proceedings was the stipulation that 1865 was the year used for calculating losses. There is NO logical reason for using 1865 for the calculations. I raise this as an issue because by using 1865, the value of the land where gold had been mined had diminished significantly and was at its lowest value. Using the Little Arkansas River Treaty of 1865 as the time of taking or associating the year with that treaty is a historical mistake for two reasons. First, the 1865 Treaty did not apply to Northern Cheyenne and Arapaho; second, the 1865 Treaty should never have been ratified⁷⁶ and had very little to do with determining the total acres of land

By 1865, land referred to in the ICC proceedings had already been granted to other entities and people, such as land grant universities, public schools, the Land Settlement Act, railroads and, most suspicious of all, the transfer of land to the city of Denver.⁷⁷

The transfer of the Denver land was a direct and unconscionable treaty violation. When deliberating the Treaty of Fort Wise of 1861, the Senate unilaterally removed Article 11. The U.S. never returned the Treaty to the Cheyenne and Arapaho Nations for approval of the alter-

ation. This action should have invalidated the treaty. This, combined with the Congressional Act of 1864, where Congress transferred the land to the City of Denver without the permission of the Cheyenne and Arapaho Nations, was undoubtedly unconscionable.⁷⁸ The failure to return the treaty to those who signed was a clear violation, and a letter from Frederic W. Seward, Assistant Secretary of the Department of State, to William P. Dole, Commissioner of Indian Affairs, notes the following:

The ratification thereof by the Senate, with an amendment, striking out the eleventh article, has been sent to this Department by the Secretary of the Senate. But as it does not from the face of the paper that the amendment referred to has been agreed to by the Indian Tribes concerned, through their proper representatives, it is herewith sent to the Indian Office in order that requisite may be complied with.⁷⁹

We have no evidence that the request from the Department of State was fulfilled. On the contrary, there are suggestions that some signatures were invalid. The climate in Colorado because of this treaty was volatile, and it would have been improbable that any governmental entity would have been able to secure the signatures. Evidence shows that the Cheyenne Chiefs denied signing the treaty in the Bureau of Indian Affairs Reports.⁸⁰

These actions occurred at the time when the Colorado Territorial Governor and Regional Superintendent of Indian Affairs, John Evans, decided to “Eliminate Indians” and not remove trespassers as legally required by the 1834 Indian Trade and Intercourse Act and the Fort Laramie Treaty of 1851. For Evans, this was a wise business decision that financially rewarded him for the rest of his life. If this tragedy goes forward without mitigation, it will destroy the morale, authority, and honor of all Americans, both living today and in the past. We cannot hold the people of the past responsible, but we can expect people living today to honorably deal with these issues in a good way.

The following is the verbatim transcript of the Northern Cheyenne ICC settlement transcript:

Counsel for petitioner Charles A. Hobbs, of the law firm of Wilkinson, Cragun & Barker, advised the Commission at the hearing on the joint motion, held November 13, 1963, that the offsets claimed by the defendant were carefully considered by petitioner’s attorneys, item by item, and all relevant precedents noted. The records of the General Accounting Office were also inspected, That serious settlement negotiations between petitioner’s attorneys and defendant’s attorneys began in August, 1962, That negotiations came to a standstill by January, 1963, and petitioner’s attorneys engaged an expert witness in anticipation of a trial on the offsets question, The expert, Professor Robert

G. Ahearn of the University of Colorado, commenced an exhaustive study of the entire course of dealings, as relevant to offsets, and the attorneys prepared material and arguments for the anticipated trial.

That in May, 1963, settlement negotiations were resumed, resulting in petitioner's attorneys making a formal offer, which with some modifications, was finally accepted by the defendant. The agreement is evidenced by the Stipulation. Mr. Hobbs stated that the petitioner's main claim before the Commission was the Fort Laramie land cession claim, and as stated above, the 13 Ind. Cl. Corn. 1 Commission has found that the petitioner is entitled to recover \$5,360,886.19 before offsets. That the defendant claimed a total of \$3,213,580.46 as offsets. The agreement now before the Commission provides that the offsets and all the other 'claims or demands which the Northern Cheyenne Tribe has or could have asserted against the defendant are to be concluded by deducting \$1,000,000.00 from the interlocutory award of \$5,360,886.19.

The other claims of the petitioner Tribe consist of:

(1) an accounting claim, wherein it is claimed that the defendant mishandled various funds of the Tribe;

(2) a claim that the defendant paid an unconscionable consideration for the purchase of rights of way under the Fort Laramie Treaty of 1851;

(3) a claim that white settlers destroyed the Tribe's buffalo game, timber and grass prior to 1868, and that defendant was responsible for this; and

(4) miscellaneous claims of intentional torts committed against the Tribe, such as wrongful attacks resulting in loss of life and property, wrongful removal from the petitioner's native lands, etc.

Mr. Hobbs also stated that the attorneys had investigated and considered each of the additional claims, and concluded that their probable value was not great, and that a net judgment for the petitioner of \$4,360,886.19 was considered somewhat more than the probable value of the Fort Laramie land cession claim alone after deduction of offsets, and that the excess constituted a proper consideration for release of petitioner's additional claims described above. Therefore, the petitioner's attorneys are of the opinion that an award of \$4,360,886.19 is a fair and reasonable net award for all of the petitioner's claims.⁸¹

Again, ironically, almost all the claims filed in the ICC had to do with land, and yet not a single acre of land was returned to the Cheyenne and Arapaho Nations.⁸² This precedent is the most egregious violation of the common decency of jurisprudential practice, whether in federal Indian Law or common tort law.

The other persuasive argument should include inadequate legal representation. As noted above, the attorney representing the Tribes inserted a false claim that the claims requested by Rufus Wallowing had little or no merit.

I believe each of the claims mentioned above should have been allowed a full hearing because of the nature of the claims. The ICC had the responsibility to have each claim analyzed by experts,⁸³ which would have determined the potential value of each of the claims submitted by Mr. Wallowing.⁸⁴ The action by the ICC is misaligned with the goal of approving a just settlement for the Northern Cheyenne. Section 2 of the ICC explicitly defines the actions that should have been pursued.⁸⁵ Allowing the Northern Cheyenne's legal representative to talk his clients out of including these extremely valuable claims and merging them into one docket does not satisfy the minimum expectation of justice in this case.

One of the complaints spread around Indian Country was that attorneys were quick to settle claims because Congress may not have been willing to act if the claim was too high. If that happened, the attorneys would not have gotten paid. The mere fact that the government was a party to the selection of the attorneys from the beginning would cast doubt on a favorable outcome for the Indian clients.

THE COAL CONFLICT ON THE NORTHERN CHEYENNE RESERVATION⁸⁶

The poverty on the Northern Cheyenne Reservation during the 1950s and 1960s was severe. The Cheyenne leadership was pressed to make decisions they did not morally and culturally support. They did believe they acted in the best interest of the tribe because of the severe poverty on the reservation. They believed that something had to be done. In 1966, Cheyenne leadership started negotiating leases for strip mining the coal on the reservation. New leases were negotiated in 1966, 1969, and 1971, and almost half of the Northern Cheyenne reservation would be strip-mined.

The following is an excerpt from a story written in 1974 about the coal conflict on the Northern Cheyenne reservation. I have included part of the article below and will attach the full article as an appendix.

American government policy has always had the effect of encouraging non-Indian control and exploitation of American Indian land and other resources. Indian land is leased out to non-Indian farmers and cattlemen. Reservation mineral resources are extracted in a harmful rush by outside corporations. Electronics and clothing manufacturing plants are brought in with special government incentives for their external owners, who frequently care little about the local people or their culture and history.

But still, the Northern Cheyennes survived and carefully kept alive the old

history and traditions. The Northern Cheyenne story is the American Indian story. And it helps to explain why American Indians are today the highest and lowest of many things. American Indians have the highest infant mortality and the lowest life expectancy of any group of Americans. They have the highest unemployment rate and the lowest family income. They have the worst housing, the worst health, and the worst school dropout rate.

Among the Northern Cheyennes, the average education level is the seventh grade, and the dropout rate is one-third. Their average annual income is \$1,800. The unemployment rate on the reservation is 40 percent. Small wonder, in view of these statistics, that the Northern Cheyenne Tribal Council, urged on by the Bureau of Indian Affairs, decided to try to make some money from coal leases. Between 1966 and 1971, the BIA approved coal mining leases and exploratory permits with outside corporations that covered 214,000 Northern Cheyenne acres, one-half the reservation. And massive strip-mining operations would have long since been underway were it not for the recently emerging leadership of the tribal council president. Allen Rowland, and the new chairman of the tribe's Resources Committee, Edwin Dahle-backed by a newly developed sense of self-confidence among the Northern Cheyennes themselves.

The Northern Cheyennes decided to act on their own. The catalytic agent was a young Washington, D.C., lawyer and consultant, George Crossland. Edwin Dahle met Crossland at an Indian conference and told him about Cheyenne's dissatisfaction with the coal leases and permits. Were it not for the agreements, Dahle said, the Cheyennes could develop the coal themselves and do it with proper respect for the environment and the Cheyenne culture.

George Crossland is an Osage Indian from Oklahoma. His face is as brown as the Osage soil and as rutted and chug-holed as an Oklahoma dirt road after a rainstorm. Under his longish black hair is an uncommon brain, trained in the University of Chicago Law School. He knew that the Osages had once owned priceless oil reserves but had leased and sold them away. Non-Indian oilmen and companies such as Phillips Petroleum had become rich, and the Osages had become poorer than ever. Crossland thought the Cheyenne leases and permits could be broken, and he was invited to Lame Deer to meet with the tribal council. Together, they studied the agreements and the law-the council decided to adopt a resolution, drafted by Crossland, directing the Secretary of the Interior, who has jurisdiction over the BIA, to declare the leases and permits null and void.⁸⁷

Over the following months, the coal and gas companies pressured the Cheyenne to recon-

sider. It did not work, and the leaders passed the Crossland resolution. The council hired a law firm to gather evidence that the Bureau of Indian Affairs had violated their trust obligation. The pleadings showed that environmental evaluations had not been performed in an adequate manner. It was even more condemning that the royalty payments were inadequate and non-competitive. They demanded that the leases and permits be canceled.

The following is the description of the outcome of the case:

Secretary Morton's ruling, issued on June 4, 1974, was a disappointment to the Northern Cheyennes. They felt it was equivocal, and it did not declare the leases and permits "null and void" as the tribe had hoped. But the clear effect of the Secretary's decision was to admit that the BIA had not done all it should have before approving the leases and permits. And the ruling stated that the "joint agreement" between the tribe and the coal companies would be required before any mining could be done. That put the Northern Cheyennes back in control. The Secretary also announced that if the tribe wanted to go to court—either directly or represented by the Justice Department to have the leases and permits declared void, he would support the effort. and the Interior Department would pay the costs and attorneys' fees. "It's a pretty grim day for the coal companies." the lawyer for the Northern Cheyennes said when the ruling was handed down.⁸⁸

During my research, I had a chance to visit with Dennis Limberhand, a Cheyenne elder and former council member. Dennis said the coal leases had been sold by the Bureau of Indian Affairs with the consent of confident Northern Cheyenne leaders. He believed the leaders were acting in the people's best interest because of the poverty level at that time. He said that they genuinely thought they were doing what was right for the people. This was amid the energy crisis of the 1970s, and the general population of the Cheyenne Nation did not agree with destroying the reservation. The leases caused a major uproar on the reservation. Eventually, a man by the name of Edwin Dahle came up with a plan that would allow the corporations to trade land that had coal on it with other areas of the country. It freed the Northern Cheyennes from the abuse of coal removal on the reservation. The Northern Cheyenne Tribal Council in 1973 voted to cancel all the permits and leases; however, Interior Secretary Morton refused to allow the leases to be canceled. It took an act of Congress in 1980 to finally cancel the leases.

The corporations did not give in, and in 1972, the Cheyenne were offered millions of dollars from Consolidation Coal to build four plants to gasify Cheyenne coal. The plants were said to be needed during the country's national "Energy Crisis." Included with the offer was a much-needed \$1.5 million health center. Cultural leader Ted Rising Sun responded, "I think I

would rather be poor in my own country, with my people, with our way of life than be rich in a torn-up land where I am outnumbered 10 to one by strangers.”

The fight to protect Mother Earth continued in 1976 when the Tribe opposed the expansion of the off-reservation coal mining efforts at Colstrip. The Northern Cheyenne won an injunction and forced the off-reservation coal mining to comply with all Clean Air standards.

The Northern Cheyenne, recognizing the need for quality educational experiences for their People, established the Dull Knife Memorial College in 1979. The name was later changed to the Chief Dull Knife College. Under the astute guidance and leadership of Dr. Richard Littlebear, the college became the leader in developing and preserving the Cheyenne language.

The Northern Cheyenne Nation has never wavered from their commitment to support their traditional cultural ways, and in the community, the elders say, “Never Give Up.”

In conclusion, the history of the Northern Cheyenne has been a mixture of perseverance and survival amid a constant assault on the People. This story should be told and repeated so the world can know about the Cheyenne and learn the truth about their miraculous survival.

ADDENDUM

Learn the language – Northern Cheyenne Bands

Known in Cheyenne either as *Notameohmésêhese* or *Notameohmésêhétaneo’o* meaning “Northern Eaters” or simply as *Ohmésêhese* / *Ôhmésêheseo’o* meaning “Eaters.”

1. Notameohmésêhese/Notameohm “NorthernCheyenne Tribe website”. *Archived from the original on February 2, 2011. Retrieved November 11, 2013.*
2. ^ Jump up to:^{a b} Oklahoma Indian Affairs. Oklahoma Indian Nations Pocket Pictorial Directory. Archived 2009-02-11 at the Wayback Machine 2008:7
3. ^ Jump up to:^{a b c d e f g h} “Cheyenne, Southern.” Archived 2009-02-28 at the Wayback Machine *Oklahoma History Center’s Encyclopedia of Oklahoma History and Culture*. Retrieved 3 July 2013.

• **ésêhétaneo’o proper (“Northern Eaters”, also simply known as Ôhmésêhese / Ôhmésêheseo’o or Omísis – “Eaters”** – They go by these names because they were known as great hunters and therefore had a good supply of meat to feed their people. They were the most populous Cheyenne group, inhabiting land from the northern and western Black Hills (Mo’óhtávo’honáéva – “black-rock-Location”) toward the Powder River Country (Páeo’hé’e – “gunpowder river” or “coal river”). Often they were accompanied by their Totoemanaho and Northern Só’taeo’o kin and had through intermarriages close ties to Lakota. Today they, along with the Northern Só’taeo’o, are the most influential among the Northern Cheyenne.

- **Northern Oévemanaho / Oivimána (Northern Oévemana – “Northern Scabby,” “Northern Scalpers”** – They now live in and around Birney, Montana (Oévemanâhéno – “scabby-band-place”) near the confluence of the Tongue River and Hanging Woman Creek in the southeastern corner of the Northern Cheyenne Indian Reservation).

- **Northern Só'taeo'o / Só'taétaneo'o (Suhtai or Sutaio** – They married only other Só'taeo'o (Northern or Southern alike) and camped separate from the other Cheyenne camps. They maintained closest ties to the Notameohmésêhese band and lived in the northern and western Black Hills (Mo'ôhtávo'honáéva – “black-rock-Location”). They also roamed together with their Notameohmésêhese and Totoemanaho kin in the Powder River Country (Páeo'hé'e), remaining north of the Platte River. They gained higher band numbers than their southern kin because of better Northern hunting and grass. They now live in and around Birney, Montana (Oévemanâhéno – “scabby-band-place”). Today they, along with the Notameohmésêhese, are the most influential among the Northern Cheyenne.

LESSER NORTHERN BANDS (NOT REPRESENTED IN THE COUNCIL OF 44):

- **Anskówînîs / Anskowinis (“Narrow Nose”, “narrow-nose-bridge”** – They are named after their first chief, properly named Broken Dish, but nicknamed *Anskówînîs*. They separated from the Ôhmésêheseo because of a quarrel.
- **Moktavhetaneo / Mo'ôhtávêhetaneo'o (Mo'ôhtávêhetane – “Black-skinned Men”, “Ute-like Men”** They are named this because they had darker skin than other Cheyenne and looked more like the Utes. Their name also means “Mountain Men,” maybe descended from Ute (Mo'ôhtávêhetaneo'o) captives.^[19] They live today in the Lame Deer, Montana (Mo'ôhtávôheomenéno – “black-lodge-place”) district on the Northern Cheyenne Indian Reservation. Lame Deer, the tribal and government agency headquarters, was also the place where rations were given out and is known as Meave'ho'eno – “the giving place” or “giving-whiteman-place.”
- **Ononeo'o / Ononeo (“Arikara People” or “Ree Band”)** – This band is of mixed Cheyenne-Arikara and Mandan heritage. They were formerly associated with the mixed Cheyenne-Lakota Masikota band and sometimes considered a Masikota sub band. today they live in the nonofficial Rosebud/Ree district (Ónoneo'o), politically part of the Muddy Creek district, between Busby and Muddy Creek, some are also present in the Lame Deer District)

- **Totoemanaho / Totoimana (Totoemana, Tútoimanáh** – “Backward Clan”, “Shy Clan,” or “Bashful Clan,” also translated as “Reticent Band,” and “Unwilling Band,” so named because they prefer to camp by themselves, lived in the northern and western Black Hills (Mo’óhtávo’honáéva – “black-rock-Location”) and along the Tongue River (Vétanové’hé’e – “Tongue River”), roamed together with their Notameohmésêhese and Northern Só’tae’o kin also in the Powder River Country (Páeo’hé’e), had through intermarriages close ties to Lakota, now centered in and around Ashland, Montana (Vóhkoohémâhoéve’ho’éno, formerly called Totoemanáheno) immediately east of the boundary of the Northern Cheyenne Indian Reservation)
- **Vóhpoométaneo’o / Woxpometaneo (Voxpometaneo** – “**White River People,**” “**White River Cheyenne**”) Named for the White River (Vóhpoo) near Pine Ridge in South Dakota and also named after a large extended family as *Wóopotsit* or *Wóhkpotsit* – “White Wolf,” “White Crafty People.” The majority joined their Cheyenne kin and settled in 1891 south of Kirby, Montana near the headwaters of the Rosebud Creek. They are now centered in and around Busby, Montana (Vóhpoométanéno) on the Northern Cheyenne Indian Reservation. Some stayed on the Pine Ridge Indian Reservation with their Oglala Lakota kin and are known as Tséhésé-ho’óhomo’eo’o – “Cheyenne-Sioux.”

ENDNOTES

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- 3 Ibid.
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- 6 Ibid., 218-219.
- 7 Ibid., 480.
- 8 Ibid., Pahr, 1997, 218-219.
- 9 Stands in Timber, John, & Liberty, Margot, 1967/1972, *Cheyenne Memories*, 270.
- 10 Weist, Tom, 1977, *A History of the Cheyenne People*, Montana Council for Indian Education, 125.
- 11 Moore, John H., 1974, *A Study of Religious Symbolism Among the Cheyenne Indians*, [unpublished doctoral dissertation], 135.
- 12 Ibid., 136.
- 13 Prucha, 1984, 646, 803-804.
- 14 Stands in Timber & Liberty, 1967/1972, 125-127, see also Prucha, 1984, 646, 803-804.
- 15 Dorsey, George A., 1905, *The Cheyenne*. [This work provides a cognitive-alien-perspective of the Cheyenne and the Cheyenne Sun Dance. Dorsey's perspective is open to criticism by the better informed Cheyenne knowledge keepers.]
- 16 I learned that the White River Cheyennes were relocated from Pine Ridge to the Northern Cheyenne Reservation from Ted Rising Sun in 1978.
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- 19 *Watonga Republican* [Blaine County newspaper], 1918, Black Hills and Chiefs Section, Sipe/Bethrong Collections, text copyright © 2004.
- 20 Prucha, 1984, ("However, one looks at the allotment, it was disappointing and damaging"), 896.a
- 21 Stromberg, Joseph, 2010, *Lands of the Lakota: Policy, Culture and Land Use on the Pine Ridge Reservation*, [unpublished senior honors thesis].
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- 23 Tiller, Veronica, Ed., 2006, *Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations*, 667-668.

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- 25 *Ibid.*, 2.
- 26 Stewart, Omer, 1976, Foreword, in R. W. Baker & A. Ehrenfeld, Comp., *Legislative History of the Indian Claims Commission Act of 1946*, iv.
- 27 From "Legal Aspects of the Indian Problem," in *Problem of Indian Administration*, Chapter 13, 805-811, cited in R. W. Baker & A. Ehrenfeld, Comp., 1976, 3.
- 28 Price, Monroe E., 1973, *Law and the American Indian: Readings, Notes, and Cases*, The Bobbs-Merrill Co., Inc., 471.
- 29 Prucha, 1984, 1019.
- 30 Washburn, Wilcomb E., 1985, Land Claims in the Mainstream of Indian/White Land History, in I. Sutton, Ed., *Irredeemable America: The Indians' Estate and Land Claims*, 22.
- 31 *Ibid.*, 26.
- 32 Krug, J. A., "Letter from the Secretary of the Interior Krug to Director, Bureau Budget Webb, re prospective costs for the Indian Claims Commission," 2 August 1946, cited in R. W. Baker & A. Ehrenfeld, Comp., 1976, 711.
- 33 Indian Claims Commission Act of 1946, 60 Stat. 1050, 1946, Section 2.
- 34 Lurie, Nancie O., 1985, Epilogue, in I. Sutton, Ed., 375.
- 35 Deloria, Jr., Vine, 1993, Class Lecture on the ICC, University of Colorado at Boulder, 30 March 1993.
- 36 Indian Claims Commission Act of 1946, 60 Stat. 1049, 1946, Section 22 a & b.
- 37 Baker, Robert W., & Ehrenfeld, A., Comp., 1976, *Legislative History of the Indian Claims Commission Act of 1946*, vi.
- 38 Sutton, Ed., 1985, 16.
- 39 4 ICC 30g, 1955.
- 40 *Ibid.*
- 41 ICC 185, 186, 1965.
- 42 16 ICC 185, 189a, 1965.
- 43 10 ICC 1, 1961.
- 44 10 ICC 1, 8, 1961.
- 45 10 ICC 1, 27, 1961.
- 46 10 ICC 1, 9, 1961.
- 47 10 ICC 1, 20-72, 1961.
- 48 Article 11 of the Fort Wise Treaty.
- 49 10 ICC 1, 74, 1961.
- 50 10 ICC 1, (1961). The capitalization process is known as the Hoskold formula.
- 51 10 ICC 1, 81-82 (1961).
- 52 10 ICC 1, 108b, 1961.
- 53 10 ICC 1, 37, 1961.

54 10 ICC 1, 2, 1961.

55 10 ICC 1, 45, 1961.

56 Carlson, Leonard, 1985, What Was It Worth? Economic and Historical Aspects of Determining Awards in Indian Land Claims Cases, in I. Sutton, Ed., 97.

57 Ibid., 99. [The calculations assume a 100-year maturation period from 1865 to 1965.]

58 “Nationalized legal discrimination” can best be explained by the use of or the failure to use legal doctrines that impact federal Indian Law.

59 Sutton, I., Ed., 1985, Irredeemable America: The Indians’ Estate and Land Claims, University of New Mexico Press, 97.

60 The Cheyenne-Arapahos of Oklahoma had a 50.61% interest in the claim.

61 16 ICC, 162, 165-166, 1965.

62 16 ICC, 162, 178, 1965.

63 Personal interview with Dennis Limberhand in May of 2023.

64 Perkinson, Robert, 1993, Short-Changing the Southern Cheyenne: U.S.-Cheyenne History of the Horse Creek Treaty Claim, an unpublished manuscript for a class taught by Vine Deloria.

65 Carlson, 1985, in I. Sutton, Ed., 215-17.

66 The destruction of the buffalo, an illegal invasion of the land, was never considered in the claims partly because of inadequate legal representation.

67 The Indian Intercourse Act of 1834 strictly prohibited invaders from occupying Indian land.

68 This specifically references gold extractions at the time.

69 The massacre at Sand Creek and the breakout at Fort Robinson violated the rights of the people to be safe in their homelands. In addition, failure of the courts to allow the Flute case to be heard is another example of the continuing injustice to the Cheyenne People.

70 Kappler, Charles J., LL.M., Ed., Comp., 1904, Indian Affairs: Laws and Treaties, Vol. II, Treaties, 594-596.

71 For details, see Prucha, Francis Paul, 1994, American Indian Treaties: The History of a Political Anomaly, 440-447. See also, Indian Land Cessions in the United States, compiled by Charles C. Royce, Fort Laramie Treaty of 1851, footnote 1, 786-787.

72 Unconscionable is a term used by the Indian Claims Commission to denote that the action was egregious.

73 Article 5 of the Fort Laramie Treaty 1851, see also Article 2 of the Treaty with the Northern Cheyenne and Northern Arapaho, 1868, which affirmed their hunting rights, “except the right to roam and hunt while game shall be found in sufficient quantiles to justify the chase,” in Kappler, 1904a, Treaties, 1012. See also 1877 Agreement that illegally eliminates “hunting rights.”

74 Section 11 of the Indian Trade and Intercourse Act of 1834.

75 The exact recession date is difficult to determine because the language continues and is included in 1882 statutes.

76 The argument against it having been ratified is the amendments added after it went to the Senate. The attempt to get the document back to tribes was abbreviated because of the Medicine Lodge Treaty of 1867-68.

77 It has been determined that the land transferred to Denver in 1864 violated Article 11 of the Fort Wise Treaty.

78 It has been well document that the city of Denver and other cities were illegally transferred and the U.S. government did not hold the title to the land when it was transferred. See Congressional Act of 1864.

79 Domestic Letter – Volume 54, August 12, 1861, 440; Department of State, Washington, August 12, 1861. [It is duly noted that this treaty was ratified on August 6, 1861, 12 Stat., 1163, six days before this letter was sent.]

80 BIA Reports (1865), 248; Colley to Commissioner of Indian Affairs, September 30, 1863, Letters Received, Upper Arkansas Agency, OIA, Record Group, Native Archives.

81 ICC settlement document.

82 Sutton, Ed., 1985, 89.

83 The Indian Claims Commission Act of 1846 60 Stat. 1049 (1946). Article 2 defines the types of claims allowed.

84 ICC Vol. 13, No. 1, Northern Cheyenne Indians of the Tongue River Reservation, Decided: November 27, 1963. [Additional findings of fact on compromise settlement of offsets and claims of the Northern Cheyenne tribe in docket No. 329-C, August 11, 1951, eleventh, a petition setting forth the same claims against the defendant was filed by the “Cheyenne and Arapahoe tribe of Indians,” Allegedly unorganized tribes, On the relation of and represented by Rufus Wallowing, An individual Indian, Petitioner, the petition was assigned docket No. 348. In effect, Docket 348 was a duplicate of docket 329, Filed by a representative of the class instead of by the tribes, To protect the claims in the event the claims were held not owned by the tribes in docket 329. By the order of May 5, 1952, Docket numbers 329 and 348 were consolidated for trial.

85 Indian Claims Commission Act, 1946, Section 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for

such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

86 Harris, Fred, & Harris, LaDonna, 1977, Indians, Coal, and the Big Sky, Confluencia.

87 Ibid.

88 Ibid.

Northern Cheyenne Tribe

*Truth, Restoration, and
Education Commission (TREC)*

Recommendations

1. It is recommended that the State of Colorado compensate the Northern Cheyenne Tribe for pain and suffering (and/or mental distress) resulting from illegal trespass.¹
2. It is recommended that the State of Colorado compensate the Northern Cheyenne for all mineral wealth extracted through illegal mining prior to any legal land cession.²
3. It is recommended that the State of Colorado compensate the Northern Cheyenne for the water rights that they inherently owned as part of their Treaties in Colorado.³
4. It is recommended that the State of Colorado fully compensate the Northern Cheyenne for its role in the forced removal of Northern Cheyenne.⁴
5. It is recommended that the State of Colorado fully compensate the Northern Cheyenne for its role in the deaths caused at the Sand Creek Massacre and support federal legislation to compensate the Northern Cheyenne descendants of the Sand Creek Massacre.⁵
6. It is recommended that the State of Colorado restore rights to the Northern Cheyenne for unrestricted cultural and traditional land use within the aboriginal territory, on all public lands in Colorado (federal and state), and must restore hunting and fishing rights, collecting medicine plants or any other historical culture use of the land.⁶

7. It is recommended that the State of Colorado provide monetary use compensation or railway land to the Northern Cheyenne, and when a railway is abandoned, return the land to the Northern Cheyenne.⁷

8. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Northern Cheyenne Tribe and other Tribes that may be located within the external boundaries of the State of Colorado access to funding that is available to other counties, municipalities, and non-profits. The State of Colorado should support all efforts for the Northern Cheyenne to protect sacred sites in Colorado.⁸

9. It is recommended that the State of Colorado no longer assess property taxes on federally recognized enrolled Northern Cheyenne members.⁹

10. It is recommended that the State of Colorado support the Northern Cheyenne Nation in its efforts to have the Indian Claims Commission settlement opened for appeal.¹⁰

11. It is recommended that the State of Colorado authorize all higher education institutions funded by state funds to provide all enrolled members of the Northern Cheyenne Nation tuition waivers, and room and board.¹¹

12. The State of Colorado should introduce legislation to provide a fee of .01% to all future real estate transactions to create a permanent fund to compensate the Northern Cheyenne for their losses while simultaneously helping improve their economic standing.¹²

ENDNOTES

1 Beginning in 1834 with the Indian Trade and Non-Intercourse Act, invaders were prohibited from settling on American Indian Land in the west. The Northern Cheyenne land is all located within the boundaries of the Act, and the intruders, invaders, squatters, and such moved into areas owned by the Tribes. The devastation diminished the welfare of the Northern Cheyenne people. This violation was not corrected by any agency even when they knew the occupation was illegal.

2 The Front Range and up to the continental divide were all legally titled to the Northern Cheyenne, yet in one year 100,000 trespassers invaded the land and mined the gold that was available. The Northern Cheyenne were never compensated for the gold taken from 1858 to present on the land that they never signed a treaty and ceded the land.

3 As we know, water rights are inherent within Treaty rights and need not be stated. The State of Colorado has never compensated the Northern Cheyenne for their water rights.

4 The forced removal was an act of genocide. Territorial Governor Evans failed in his duties as the Superintendent of Indian Affairs, and the state should be held liable for his actions. There must be a full investigation of acts of genocide, with each incident reported for the public record, and the victims should be compensated for the wrongful action.

5 The State of Colorado, through its Territorial Governor Evans and the Colorado militia, has significant culpability for the murders and destruction, and they need to lead the way to compensate for any losses associated with the loss of life and other damages. The federal government shares the blame for the action and, as the trustee and guardian of the Tribal Nations, should lead the effort to compensate the descendants.

6 The State of Colorado and the federal government must provide free access to any locations that the Northern Cheyenne people used for ceremonial purposes, for collection of plants for medicinal purposes, and for hunting buffalo that are no longer available to the Northern Cheyenne people.

7 The State of Colorado's economy flourished when the railroads were given land via the Railroad Act. At no time did the Northern Cheyenne people benefit from these land transfers.

8 The current legislation does not allow for Tribal Nations to access GOCO resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes. According to the U.S. Forest Service there are over 200 sacred sites that are not currently protected.

9 The Northern Cheyenne people who live off the reservation have a reserved right not to pay state property taxes as they are still living within their homelands. The status granted by the United States Citizenship Act in 1924 protects Northern Cheyenne members with a protectorate clause.

10 In the reviews of the Indian Claims Commissions dockets 329 and 348, there are significant issues with the process. The calculations to determine values were biased, the issue of the unratified Treaty of 1851, along with the illegal taking of the land in the Fort Wise Treaty

of 1861. The final award to the Northern Cheyenne Agreement contained unscrupulous and dishonorable dealings on the part of the United States government. In addition, the Indian Claims Commission Docket 329 A and 329 B (16 Ind. Cl. 612) and others left numerous issues unresolved, and when the Tribes inserted a petition to reserve the rights for appeal, they were automatically barred by Sec. 22 of the ICC rules. This is an injustice that compels and argues for an appeal. In other ICC cases, when an ICC Commissioner (Defendant), objected to an ICC ruling, the issues were appealed to the Court of Claims. This created an opportunity to appeal a ruling by the ICC, where no such right exists for the Tribes (Plaintiff) in ICC actions. This is inherently discriminatory and any and all ICC appeals should be appealable.

11 The State of Colorado has a duty and moral responsibility to help the Northern Cheyenne People recover from the losses associated with the sordid history and treatment of American Indians in the past. All schools in the state benefit from land that belonged to American Indians. The School Fund received 4 million acres of land in Colorado to support schools, and the Northern Cheyenne students have yet to benefit from this resource. Every Northern Cheyenne child should receive an exceptional educational experience with tutors and financial assistance to enhance achievement. It is also noted that Colorado State University received substantial Northern Cheyenne land to help start the institution and still holds 19,000 acres of land and a healthy endowment. The Northern Cheyenne Nation and their students have not seen any significant opportunities to increase their acceptance and success at CSU.

12 This effort would do the least harm to current Colorado residents while compensating for past wrongs and creating restorative justice.

Ute Tribes

PART I

TREC Ute Report: Background and U.S.-Ute Relations and Treaty History

Editor's note: This report is a compilation of material taken from a variety of other sources, some of which provide their own internal citations.

INTRODUCTION

The following was taken from the website of the Southern Ute Tribe.

The Mouache band lived on the eastern slopes of the Rockies, from Denver south to Trinidad, Colorado, and further south to Las Vegas, New Mexico.

The Caputa band lived east of the Continental Divide, south of the Conejos River and in the San Luis Valley near the headwaters of the Rio Grande. They frequented the region near Chama and Tierra Amarilla. A few family units also lived in the shadow of Chimney Rock, now a designated United States National Monument.

The Weenuchiu occupied the valley of the San Juan River and its north tributaries in Colorado and Northwestern New Mexico.

The Uncompahgre (Tabeguache) were located near the Uncompahgre and Gunnison, and Elk Rivers near Montrose and Grand Junction, Colorado.

The White River Ute (Parianuche and Yamparika) lived in the valleys of the White and Yampa river systems, and in the North and Middle Park regions of the Colorado Mountains, extending west to Eastern Utah.

The Uintah lived east of Utah Lake to the Uinta Basin of the Tavaputs

Plateau near the Grand and Colorado River systems.

The Pahvant occupied the desert area in the Sevier Lake region and west of the Wasatch Mountains near the Nevada boundary. They intermarried with the Goshute and Paiute in Southern Utah and Nevada.

The Timonogots lived in the south and eastern area of Utah Lake, to North Central Utah.

The Sanpits (San Pitch) lived in the Sapete Valley, Central Utah and Sevier River Valley.

The Moanumts lived in the upper Sapete Valley, Central Utah, in the Otter Creek region of Salum, Utah and Fish Lake area; they also intermarried with the Southern Paiutes.

The Sheberetch lived in the area now known as Moab, Utah, and were more desert oriented.

The Comumba/Weber band was a very small group and intermarried and joined the Northern and Western Shoshone.

Today, the Mouache and Caputa bands comprise the Southern Ute Tribe and are headquartered at Ignacio, Colorado. The Weenuchiu, now known as the Ute Mountain Utes, are headquartered at Towaoc, Colorado. The Tabeguache, Grand, Yampa and Uintah bands comprise the Northern Ute Tribe located on the Uintah-Ouray reservation next to Fort Duchesne, Utah.¹

TREATIES

1849 First treaty between Utes and the United States at Abiquiu. Chief Quiziachigiate, a Caputa, signed as principal chief and 28 other Utes signed as subordinate chiefs.

1855 In early summer, a treaty was concluded with the Caputa band and one with the Mouache band in August. These were not ratified by the United States.

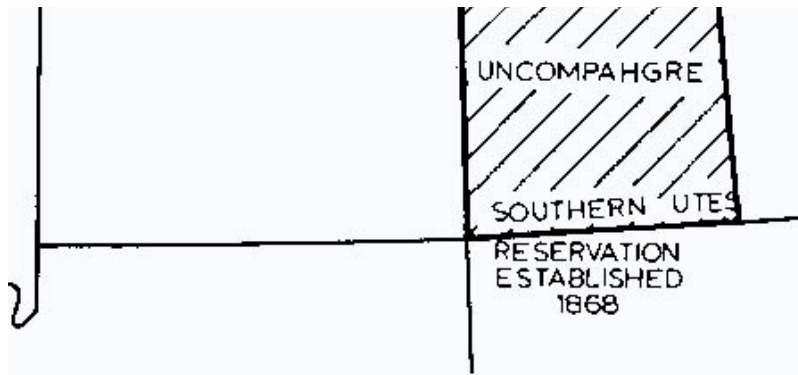
1860 Tabeguache Utes placed under the Denver Agency; Mouache and Jicarilla attached to a sub-agency at Cimarron on Maxwell's Ranch; Caputa Utes continue to be served at Abiquiu; Weeminuche were managed by Tierra Amarilla.

1861 Agency for the Tabeguache Utes established at Conejos; Lafayette Head was the first agent.

1863 Tabeguache cedes San Luis Valley to the U.S.

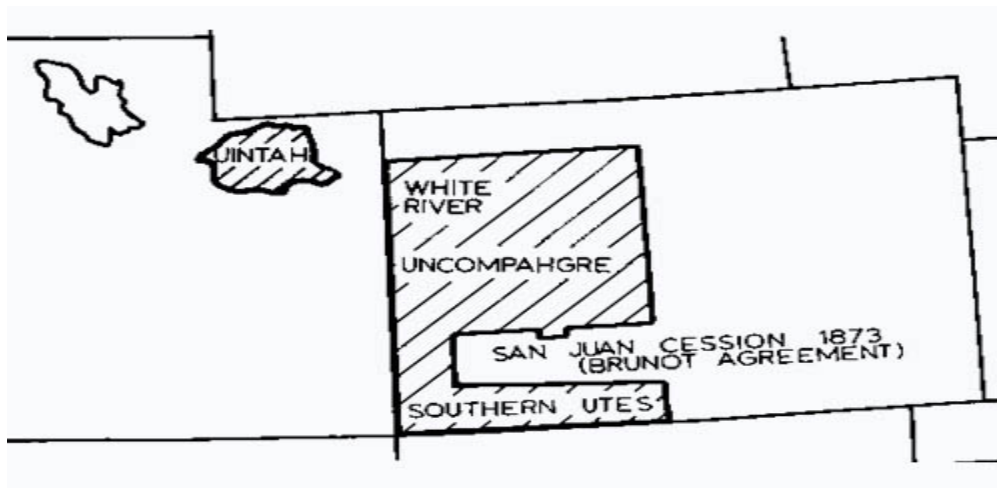
1868 Treaty with the Utes and a reservation created for them consisting of approximately the western one-third of Colorado. Ouray selected as principal chief.

BACKGROUND AND U.S. - UTE RELATIONS AND TREATY HISTORY



1874 President U.S. Grant signs the Brunot Agreement and thousands of Ute lands are now appropriated by the U.S. government.

1874 U.S. takes more Ute lands, granting hunting rights as long the Utes are at peace with the white people. U.S. sets aside a perpetual trust of \$50,000 per year in money or bonds which shall be sufficient to produce the sum of twenty-five thousand dollars per annum. Which sum of twenty-five thousand dollars per annum shall be disbursed or invested at the discretion of the president or as he may direct, for the use and benefit of the Ute Indians annually forever. For said services Ouray, Head Chief of the Ute nation shall receive a salary of one thousand dollars per annum for the term of ten years or so long as he shall remain Head Chief of the Utes and at peace with the people of the United States. Approved April 29, 1874.



1877 Establishment of the Southern Ute Agency at Ignacio to serve the Caputa, Mouache, and Weeminuche Ute bands.

1878 Caputa and Weeminuche cede rights to the 1868 reservation.

1880 Ouray goes to Washington, D.C. for treaty negotiations.

1880 Ute Agreement signed, resulting the loss of more acres of Ute land.

1880 Chief Ouray Dies.

1881 Tabeguache and White River Utes removed to the Uintah Reservation in Utah.

1881 Denver and Rio Grande Railroad goes through Southern Ute land.

1886 Consolidation of the Uintah and Ouray Reservations for the Northern Utes.

1888 Utes agree to move to San Juan County, Utah, but Congress fails to ratify agreement.

1894 Ute allotment bill presented to Congress.

1895 Ignacio led most of the Weeminuche to the western part of the Southern Ute Reservation in protest against the government's policy of land allotment.

1895 Utes agree to the allotment bill.

1896 New agency set up at Navajo Springs to serve the Weeminuche who did want to accept land in severalty.

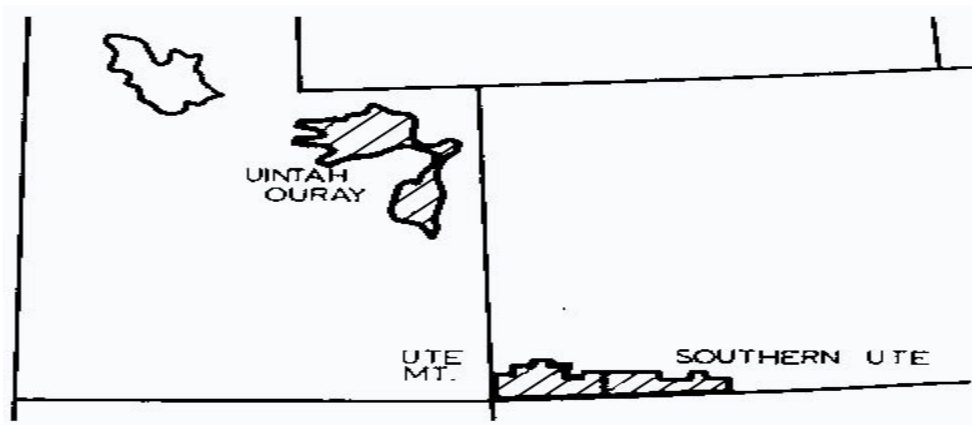
1896 Allotments are distributed to Southern Utes.

1918 Consolidated Ute Indian Reservation established.

1936 Establishment of a Tribal Council in accordance with the Wheeler-Howard or Indian Reorganization Act of 1934.

1937 Restoration Act returns 222,016 acres to the Southern Utes.

1953 Settlement with U.S. Government for Ute land.²



INDIAN AGENCIES AND AGENTS AFFILIATED WITH THE UTES

The following was taken from the website FamilySearch.

The Abiquiu Agency was established in 1854 with responsibility for the Capote Ute and the Jicarilla Apache in northwestern New Mexico. With the establishment of the Cimarron Agency in 1862, the Jicarilla Apache were transferred to that agency and the Abiquiu Agency had responsibility for the Capote and Weeminuche Ute. The Abiquiu Agency was consolidated with the Pueblo Agency in 1878 and the Ute Indians were assigned to the Southern Ute Agency in Colorado. The name was changed to the Jicarilla Agency in 1881 and the supervision of the agency was transferred to the Mescalero Agency in southern New Mexico in 1882.³

Agents and Appointment Dates:

BACKGROUND AND U.S. - UTE RELATIONS AND TREATY HISTORY

Lorenzo Labadi 1854, Diego Archuleta 1857, Jose A. Manzanares 1861, Diego Archuleta 1865, William R.M. Arny 1867, James C. French 1868, John Ayres 1869, Lt. J.B. Hanson 1869, John S. Armstrong 1871, William D. Crothers 1873, and Samuel A. Russell 1874.⁴

1863 Treaty with Tabeguache band (see <https://catalog.archives.gov/id/75696662>) reduced Ute lands

From:

Beginning on the 37th degree of north latitude, at the eastern base of the Sierra Madre mountains; running thence northerly with the base of the Rocky mountains to the forty-first parallel of north latitude; thence west with the line of said forty-first parallel of north latitude to its intersection with the summit of the Snowy range northwest of the North Park; thence southerly with the summit of the Snowy range southerly to the Rabbit-Ear mountains; thence with the summit of the said Rabbit-Ear range of mountains, west of the Middle Park, to the Grand River; thence with the said Grand river to its confluence with the Gunnison river; thence with the said Gunnison river to the mouth of the Uncompahgre river; thence with the said Uncompahgre river to its source in the summit of the Snowy range, opposite the source of the Rio Grande del Norte; thence in a right line south to the summit of the Sierra La Plata range of mountains, dividing the waters of the San Juan river from those of the Rio Grande del Norte; thence with the summit of said range southeasterly to the thirty-seventh parallel of north latitude; thence with the line of said parallel of latitude to the place of beginning;

And whereas the said Indians, for the purpose of maintaining friendly relations with the people and government of the United States of America and for the other considerations herein mentioned, are willing to cede a portion of said...

To:

Beginning at the mouth of the Uncompahgre river; thence down Gunnison river to its confluence with the Bunkara river; thence up the Bunkara river to the Roaring Fork of the same; thence up the Roaring Fork to its source; thence along the summit of the range dividing the waters of the Arkansas from those of the Gunnison river to its intersection with the range dividing the waters of the San Luis valley from those of the Arkansas river; thence along the summit of said range to the source of the Sandy creek of the San Luis valley; thence down the Sandy creek to the place where its waters sink at low water; thence in a right line to the point where the centre of the channel of the Rio Grande del Norte crosses the 106th line of longitude west from Greenwich; thence up the

centre of the main channel of the Rio Grande del Norte to the line of the 107th degree of longitude west from Greenwich; thence south along said line to the summit of the range dividing the waters of the Rio Grande del Norte from those of the San Juan river; thence along said summit westerly to a point due south of the source of the Uncompahgre river; thence to said source and down the main channel of said Uncompahgre river to its mouth, the place of beginning.

1863 Treaty participating parties:

Commissioners (as per treaty):

John Evans, Gov. Colorado Territory/Supt. of Indian Affairs

Michael Steck, Supt. of Indian Affairs New Mexico

Simeon Whiteley, U.S. Agent to the Grand River and Uintah Bands of Utah Indians

Lafayette Head, U.S. Indian Agent

Ute Representatives (as per treaty):

UN-COW-RA-GUT

SHA-WA-SHE-YET

COLORADO

U-RAY

NO-VA-VE-TU-QUA-RET

SA-WA-WAT-SE-WICH

A-CA-MU-CHE-NE

MU-CHU-CHOP

SA-PATCH

CINCHE

See http://resources.utulsa.edu/law/classes/rice/Treaties/15_Stat_0619_Ute.htm

Signatories to 1868 Treaty:

N.G. Taylor,

A.C. Hunt, governor, &c.,

Kit Carson, Commissioners on the part of the United States.

U-re, his x mark.

Ka-ni-ache, his x mark.

An-ka-tosh, his x mark.

Jose-Maria, his x mark.

Ni-ca-a-gat, or Greenleaf, his x mark.

Guero, his x mark.

Pa-ant, his x mark.

BACKGROUND AND U.S. - UTE RELATIONS AND TREATY HISTORY

Pi-ah, his x mark.

Su-vi-ap, his x mark.

Pa-bu-sat, his x mark.

Witnesses:

Daniel C. Oakes, United States Indian agent.

Lafayette Head, United States Indian agent.

U.M. Curtis, interpreter.

H.P. Bennet.

Albert G. Boone.

E.H. Kellogg.

Wm. J. Godfroy.

We, the chiefs and headmen of the aforesaid named bands of Ute Indians, duly authorized by our people, do hereby assent and agree to the amendment of the Senate, the same having been interpreted to us, and being fully understood by us.

Witness our hands and seals on the days and dates set opposite our names respectively.

Date of Signatures Aug. 15, 1868.

Grand River Ute Indians:

Sac-we-och, his x mark, White Lock of Hair.

Tah-nach, his x mark, Granite Rock.

Pah-ah-pitch, his x mark, Sweet Herb.

Tab-y-ou-souck-en, his x mark, Sun Rise.

Shou-wach-a-wicket, his x mark, Rain Bow.

Pe-ah, his x mark, Black Tail Deer.

Ah-ump, his x mark, Pine Tree.

Uintah Ute Indians:

An-tro, his x mark, Rocking.

Pah, his x mark, Water.

Quir-nauch, his x mark, Eagle.

Yah-mah-na, his x mark, Briar.

Signed in the presence of:

A. Sagendorf.

Uriah M. Curtis, special interpreter.

E.H. Kellogg, secretary Colorado Indian superintendency.

Daniel C. Oakes, United States Indian agent.

Louis O. Howell.

Date of signature. Sept. 1.

Yampas:

Sa-wa-wat-se-witch, his x mark, Blue River.

Colorado, his x mark, Red. (Spanish.)

Pa-ant, his x mark, Tall.

Su-ri-ap, his x mark, Lodge Pole's Son.

Nick-a-a-gab, his x mark, Green Leaf.

Signed in the presence of:

E.H. Kellogg, secretary Indian superintendency Colorado Territory.

U.M. Curtis, special United States interpreter.

Daniel C. Oakes, United States Indian agent.

H.P. Bennet.

Louis O. Howell.

Date of signing. Sept. 14.

Muaches:

Ou-ray, his x mark, Arrow.

Sha-wa-na, his x mark, Blue Flower.

Guero, his x mark, Light Haired.

Tah-be-wah-che-kah, his x mark, Sun Rise.

Ah-kan-ash, his x mark, Red Cloud.

Tabaguaches:

Ka-ni-ache, his x mark, One Who Was Taken Down.

An-ka-tosh, his x mark, Red. (Ute.)

Sap-po-wan-e-ri, his x mark,

Tu-sa-sa-ri-be, his x mark,

Na-ca-get, his x mark, Son to Tu-sa-sa-ri-be.

Ya-ma-aj, his x mark, or George.

Signed in the presence of:

Wm. J. Godfroy.

Daniel C. Oakes, United States Indian agent.

Edward R. Harris, special interpreter.

E.H. Kellogg, secretary Colorado Indian superintendency.

Louis O. Howell.

BACKGROUND AND U.S. - UTE RELATIONS AND TREATY HISTORY

Uriah M. Curtis, interpreter.

To the other copy of these instruments are signed as witnesses the following names: Juan Martine Martines, (friend of Indians), Albert H. Pfeiffer, (their old agent), Manuel Lusero.

Date of signing. Sept. 24.

Ca-po-tas Utes:

So-bo-ta, his x mark, A Big Frock.

I-si-dro, his x mark,

Sow-wa-ch-wiche, his x mark, A Green Herb.

Ba-bu-zat, his x mark, A Crystal Drop Water.

Sab-ou-ichie, his x mark, Wounded in the Abdomen.

Chu-i-wish, his x mark, Long Tailed Deer.

I-ta-li-uh, his x mark,

E-ri-at-ow-up, his x mark, Water Carrier.

Aa-ca-wa, his x mark, Red Eyes.

Ac-i-apo-co-ego, his x mark, Red Snake.

Martine, his x mark, Named after a Mexican friend.

Ou-a-chee, his x mark,

Tap-ap-o-watie, his x mark,

Su-vi-ath, his x mark, The Swoop of a Bird.

Wi-ar-ow, his x mark,

Signed in the presence of:

Lafayette Head.

Alb. H. Pfeiffer.

Manuel Lusero.

E.H. Kellogg, secretary Colorado Indian superintendency.

Uriah M. Curtis, interpreter.

Daniel C. Oakes, United States Indian agent.

Date of signing. Sept. 25.

We-mi-nu-ches Utes:

Pa-ja-Cho-pe, his x mark, A Claw.

Pa-no-ar, his x mark, Broad Brow.

Su-bi-to-au, his x mark, Ugly Man.

Te-sa-ga-ra-pou-it, his x mark, White Eyes.

Sa-po-eu-a-wa, his x mark, Big Belly.

Qu-er-a-ta, his x mark, A Bear.

Signed in the presence of:

Lafayette Head.

Manuel Lusero.

Alb. H. Pfeiffer.

E.H. Kellogg, secretary Colorado Indian superintendency.

Juan Martine Martines, interpreter and Indian's friend.

Daniel C. Oakes, United States Indian agent.

Uriah M. Curtis, interpreter.⁵

IMPORTANT NOTE REGARDING TREATIES AND TREATY LANGUAGE:

Text in the following three paragraphs was taken from a 2014 Harvard Law Review article titled "A Bad Man Is Hard to Find."

"Touching the pen," the action of the Indian in touching the end of the pen while the scribe marked an X after his name, was frequently objected to by Indian leaders. They... felt it unnecessary.... For individual Indian leaders, touching the pen apparently signified that they were validating all they had said at a council; in many cases the record of the treaty proceedings makes it clear that the Indian leaders did not realize their signatures committed them to *only* those statements written in the treaty.⁶

What is just as (and perhaps more) important than the written terms of the treaties are the speeches of the tribal chiefs present at the councils. Indeed, the four corners of the document not only fail to reflect the whole perspective of most of the parties, but also may *contradict* what the Indian parties understood to be the agreement.⁷

Liberated from text and the fiction of pan-Indian homogeneity, the work of interpreting these treaties naturally rests on nuanced historical inquiry. They are products of a particular and significant moment in American history.⁸

MIDDLE PARK AND CONEJOS AGENCIES

The following was taken from the History Colorado website, home of the Colorado Encyclopedia.

With the establishment of Colorado Territory on February 10, 1861, the Colorado territorial governor became the local superintendent of Indian affairs. Two agencies were established in Colorado. The Conejos Agency had already been established in 1860 in the San Luis Valley to adminis-

ter to the Tabeguache Utes, who had previously been under the jurisdiction of the Taos Agency under Kit Carson as early as 1856. Prior to its official establishment, the Conejos ranch of Lafayette Head had been where annuity goods for the Tabeguache and **Mouache Utes** were distributed beginning in 1858. Head became the first agent at the Conejos Agency. The Middle Park Agency was established in 1862 for the Grand River, Uinta, and Yampa Utes. Simeon Whiteley was appointed the first agent for the Middle Park Agency in 1862. The agency had no real headquarters, though its business was carried out at **Hot Sulphur Springs, Breckenridge, Empire,** and Denver.⁹

1863-1882: TREATIES AND VIOLENCE LEAD TO UTE LAND LOSSES

Editor's note: The following sections describing mid-nineteenth-century loss of Ute lands, and the treaties and historical incidents associated with and leading to such losses, is taken verbatim from the Ashley National Forest Assessment: Tribal Uses Report, Public Draft, prepared by U.S. Forest Archeologist Jeff Rust in 2017. Rust provides a clear and comprehensive summary and description of this period in Ute history.

The Tabeguache Treaty of 1863 was crafted in Conejos, Colorado and ceded all Tabeguache Ute lands in Colorado east of the continental divide to the United States Government.¹⁰

The Utah Indian Treaty of 1865 was signed at the Spanish Fork Indian Farm. The treaty relinquished all Ute lands in the territory of Utah to the U.S. Government, in exchange for reservation lands in the Uinta Basin. The treaty required the Utes to move to the reservation within 1 year of the treaty being ratified. The treaty was never ratified by Congress, but the U.S. Army implemented the terms of the treaty and removed the Utes from the Wasatch Front within the next year. The unfairness of the treaty led to an outbreak of raids and skirmishes by the Utes and was called the Black Hawk War (Simmons 2000).¹¹

Supplementary Information:

Government documents related to unratified treaty with Weber Utes and Paiute, September 18, 1865, digitized by J. Willard Marriott Library, University of Utah. (See <https://collections.lib.utah.edu/details?id=363801>)

The Ute Treaty of 1868 was signed by a Ute delegation from Colorado. The Utes lost more of their traditional lands in Colorado, but the treaty guaranteed the U.S. Government would keep all non-Indians out of tribal reservation lands. The Utes demanded the government enforce previous treaties and objected to the people overrunning their land. The U.S. Government intended to use the

military to expel squatters on Ute lands in Colorado, but the territorial governor objected and government protection of Ute treaty lands never materialized.¹²

Supplementary Information:

Negotiation with Ute Indians; Letter from Acting Secretary of the Interior, 1872 (*see* <https://collections.lib.utah.edu/ark:/87278/s6ns3qdj>); Indian Agencies and Agents (*see* <https://coloradoencyclopedia.org/article/indian-agencies-and-agents>); and Ute Treaty of 1868 (*see* <https://coloradoencyclopedia.org/article/ute-treaty-1868>).

Under pressure from miners pouring into the San Juan Mountains of southwestern Colorado, the Utes reluctantly ceded a 60- by 90-mile section of their territory in the San Juan Mountains. This 1874 Brunot Agreement separated lands between the Northern Colorado Utes and the Southern Utes. The Northern Colorado Utes were comprised of the Uncompahgre Ute band, led by Chief Ouray, and the White River Ute bands. The Southern Utes were comprised of the Mouache Ute Band, Capote Ute Band, and Weeminuche Ute band.¹³

(*See* <https://collections.lib.utah.edu/ark:/87278/s64t9dxh>)

In 1879, conflict arose at the White River Agency headquarters in northwestern Colorado. White River Utes became upset with Agent Nathan Meeker's attempts to reform them into an agricultural society. In September of 1879, when Meeker plowed under one of the Ute's favorite pastures used for horses, a local chief (Chief Johnson) had a heated argument with Meeker and hurled him against a hitching rail. Thoroughly frightened, Meeker called for military protection. Major Thomas Thornburgh and four cavalry companies (about 178 men) were dispatched from Fort Steel, Wyoming to protect Meeker. When the White River Utes learned that troops were being sent to the reservation, they immediately began to prepare to defend their land. When the military column arrived, Thornburgh and his men were met by more than 300 mounted Utes. In the resulting battle, eleven soldiers including Thornburgh, and 37 Utes died. At the same time, Meeker and 10 employees were killed by renegade Utes at the agency.¹⁴

Colorado settlers in the area immediately declared the Utes were in open rebellion and called for their removal. By 1882, additional lands were added to the Uintah Valley Reservation. The Utes on the White River Reservation were forced to leave their homelands and move to the Uinta Basin. Euro-American settlers in Colorado, as well as the Colorado governor, also insisted the Utes on the Uncompahgre Reservation, led by Chief Ouray and his wife Chipeta, be moved to the Uinta Basin. This insistence came even though the Uncompahgre Utes had not been involved with the Meeker incident, nor had

they been uncooperative with reservation administrators. After the Utes from the reservations in Colorado were moved to the Uinta Basin, their reservation lands in Colorado were opened up for Euro-American settlement.¹⁵

Supplementary Information:

Map Removal of Colorado Utes (See: <https://collections.lib.utah.edu/ark:/87278/s60s2jxx>)

FURTHER NEGOTIATIONS, CONGRESSIONAL ACTS, AND LAND ATTRITION

Editor's note: The following section comes predominantly from a memorandum written by U.S. Principal Deputy Solicitor Daniel H. Jorjani, found at the website of the U.S. Department of the Interior, though some material also was taken from other sources.

Editor's note regarding the Jorjani material: In February 2018, Mr. Jorjani wrote a memorandum to the Secretary, Deputy Secretary, and Assistant Secretary of Indian Affairs, responding to an opinion request on whether public domain lands set aside and withheld from the 1882 sale by the U.S. as a possible reservation location the for the Uncompahgre Ute Indians could (and should) now be transferred back and held in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe). Mr. Jorjani determined the Ute Indian Tribe could not ask for such a transfer, nor did they have any "compensable ownership interest"¹⁶ in the lands withheld from sale in 1882. He based his opinion on "[his] review of the factual and legal history"¹⁷ behind the Ute Indian Tribe's land transfer request, as shown in the following material taken from his memorandum. Citations in these sections not sourced to Mr. Jorjani's own writing are citations provided by Mr. Jorjani in his memorandum.

In 1887, Congress granted the Utah Midland Railway (UMR) a right of way to enter the Uncompahgre Reservation at a point on the east boundary line of the Utah Territory near the point where the White River met the boundary and proceed westward across the Uncompahgre and Uintah Reservations in order to reach Salt Lake City.¹⁸ The 1887 Act provided that the Secretary of the Interior was to fix the amount of compensation to be paid the Indians for the right of way. The company's rights would not vest until such time that the Secretary approved their plans and the compensation was paid. The right of way would expire unless the rail line was constructed within three years from the date of the Act's passage. While initial work commenced, the UMR did not complete the rail line.¹⁹ It is unknown whether any compensation was credited to the Tribe or individual Indians for UMR's entry onto the Ute reservations to

conduct surveys and mapping.²⁰

In 1894 and 1897, Congress opened the Uncompahgre Reservation to allotment and subsequent entry by non-Indian settlers. The 1894 Act provided that unallotted lands would be “restored to the public domain and made subject to entry [under the homestead and mineral laws of the United States].”²¹ This Act provided that the Indians would pay \$1.25 an acre for any allotment to be drawn against the fund established for deposit of proceeds derived from the sale of the Ute lands in Colorado following the 1880 cession. Congress distinguished the position of the Indians on the Uncompahgre and Uintah Reservations relative to their rights in their designated lands, finding that the “Uncompahgre Indians have no title to any of the lands within the [Uncompahgre] reservation [and] nothing more than the privilege of temporary occupancy.”²² Tribal members protested the payment provision. No allotments were certified by the Secretary under this Act.²³

In 1863, the Tabeguache Band entered into a treaty with the United States whereby they relinquished all claim to any and all of their lands within territory of the United States, wherever situated, in exchange for a reservation of lands within the Territory of Colorado. 13 Stat. 673 (Dec. 14, 1864). Prior to ratification, the United States Senate amended the treaty terms to clarify that the claimed exclusive rights were only as against all other Indian tribes and that nothing in the treaty would be construed to admit, on the part of the United States, any greater title or interest in the lands so excepted and reserved than existed upon the United States’ acquisition of the territory from Mexico. *See Hayt v. United States*, 38 Ct. Cl. 455, 460-465 (1903), (detailing the history of Ute land tenure from Spanish rule and Mexican cession under the Treaty of Guadalupe Hidalgo, 9 Stat. 922, 930, to the first treaty with the United States, 9 Stat. 984). Absent recognized land grants (e.g., Pueblo and Mission Indian), Mexican law did not consider “aboriginal title” of any particular Indian group beyond a right of occupancy within their accustomed territories. Thus, the United States did not recognize these areas as “Indian country” upon cession from Mexico until initial treaties and assignment of reservations established them as such. The 1868 Treaty, (see note 5 in the endnotes) incorporated the provisions of the 1864 Treaty with the Tabeguache to the extent they were not inconsistent.²⁴

In contrast, in the 1897 Act, Congress provided for allotment without payment by the Indians, and provided that unallotted lands would, on and after April 1, 1898, be “open for location and entry under all the land laws of the United States.” The Act did not include the specific reference to public domain. Title to all lands containing gilsonite, asphalt, and other like substances was reserved to the United States.²⁵

Neither the 1894 nor the 1897 Act provided for payment or other specific benefit to the Tribe resulting from the sale of the unallotted Uncompahgre lands. In reconciling the application of multiple allotment acts to the Uncompahgre Reservation, the [Interior] Department determined that the 1897 Act controls where there is any difference in their provisions.²⁶ Under the 1897 Act, 83 Indian allotments were issued and very little homesteading occurred.²⁷

Supplementary Information:

Map of Opening of the Uncompahgre Reservation 1897 (June 7, 1897). (See: <https://collections.lib.utah.edu/ark:/87278/s6w122cf>)

On September 26, 1933, the Secretary temporarily withdrew the “vacant and un-entered lands within the area embraced in [the] Executive Order of January 5, 1882,” from further disposition “as a grazing reserve, in aid of legislation to make the withdrawal permanent.”²⁸

In 1934, Congress passed the IRA [Indian Reorganization Act] in part to restore, replace, and protect tribal homelands. In pertinent part, Section 3 provides:

The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States; Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act...²⁹

The Commissioner of Indian Affairs wrote to the Secretary concerning Section 3’s applicability to reservations “where lands have been opened, the Indians to receive the proceeds of sale only as the tracts are disposed of” and identified those reservations.³⁰ He recommended that those reservations be temporarily withdrawn from disposal until the question of permanent restoration to tribal ownership could be considered. On September 19, 1934, the Secretary directed that “lands, the proceeds of which, if sold, would be deposited in the Treasury of the United States for the benefit of the Indians,” be temporarily withdrawn from disposal of any kind.³¹ This “General Withdrawal” or “1934 Order of Withdrawal” listed lands on numerous reservations, with citation to the “acts, under which such ‘openings’ occurred.” The 1934 Order of Withdrawal included lands in Colorado, “Utes Act of June 15, 1880 (21 Stat. 199),” and in Utah, “Uintah and Ouray Act of May 27, 1902 (32 Stat. 263, as amended),” that

were temporarily withdrawn from disposal so that proper consideration could be given to full restoration under section 3. There was no specific inclusion of the Uncompahgre Reservation nor reference to the 1894 and 1897 Acts that provided for allotment and opened the remainder to entry under the public land laws.³²

Following the 1933 Grazing Withdrawal Order, both Indians and non-Indians used the Uncompahgre grazing reserve, resulting in tension. Pursuant to a 1935 agreement between the Department, local stockmen, and tribal members, the Department placed the entire area of the Grazing Withdrawal Order under the administration of the Taylor Grazing Act.³³ The Commissioner of Indian Affairs was required to concur in all matters affecting policy relative to the area's administration under Taylor Grazing Act authority. Simultaneously, Congress contemplated the establishment of a "new" reservation that would definitively recognize the interests of the Tribe amid the conflicts over range use.³⁴ By 1936, the Department took action to extend the 1935 agreement "until such final action has been taken by Congress, with the understanding that in the meantime grazing fees for Indians are to be waived, retroactive to July 19, 1933."³⁵ Congressional efforts to address these issues did not succeed. On June 14, 1943, the Secretary approved a new agreement which replaced the 1935 agreement. The new agreement specified an area within Utah Grazing District 8 where the Tribe would be granted a renewable 10-year grazing permit, without charge, and where the Office of Indian Affairs would assume administrative jurisdiction. The operative instructions between the Office of Indian Affairs and the Grazing Service explicitly required that grazing fees charged non-Indian users would be distributed pursuant to section 10 of the Taylor Grazing Act.³⁶

Meanwhile, in 1937, the Secretary, under Section 3 of the IRA, authorized restoration of lands in Colorado that had been ceded under the 1880 agreement to the Confederated Bands.³⁷ And, in a 1945 Order, the Secretary restored approximately 217,000 acres of undisposed lands to the Reservation. The 1945 Order specifically referenced the 1902 statute, as amended, that opened the "Uintah Reservation" for allotment to the Uintah and White River Ute bands.³⁸ The Secretary found that, pursuant to the authority of Sections 3 and 7 of the IRA, "restoration to tribal ownership of all lands which are now or may hereafter be classified as undisposed-of opened lands of the Uintah and Ouray Reservation will be in the public interest, and said lands will be restored to tribal ownership for the use and benefit of [the Tribe]."³⁹ The 1945 Order did not reference either the Uncompahgre Reservation or its associated 1894 or 1897 Acts. In 1946, the Office of the Solicitor issued a memorandum concluding that

restoration of lands within the Uncompahgre Reservation could only be accomplished by Congressional action.⁴⁰

In 1948, Congress passed an act directing the Secretary to revoke the 1933 Grazing Withdrawal Order and extend the boundaries of the Uintah and Ouray Reservation to include the Hill Creek Extension, which partially overlaps with the Uncompahgre Reservation.⁴¹ In a subsequent Order that same year, the Secretary directed that these “remaining lands” listed in the 1933 Grazing Order, but that fell outside of the Hill Creek Extension, “shall be administered for grazing purposes under applicable laws.”⁴²

In 1951, the Tribe filed a petition with the Indian Claims Commission (ICC) on behalf of the Uncompahgre Band, asserting that the United States breached the terms of the 1880 agreement with respect to the Band by a course of dealings that ultimately resulted in an uncompensated “taking of the lands of the Uncompahgre Reservation in Utah.”⁴³ In conjunction with the settlement of its other ICC dockets involving other Ute lands, the Tribe was ultimately awarded \$300,000 in settlement of their claims.⁴⁴ The terms of the settlement decreed that the final judgment would “finally dispose of all claims or demands which the petitioner asserted or could have asserted against the defendant,” and that the Tribe would “be barred from asserting all such claims or demands in any further action.”⁴⁵

The majority of lands at issue in the Tribe’s present request are now administered for multiple-use and sustained yield by the BLM under the Vernal Resource Management Plan.⁴⁶ Other lands within the Uncompahgre Reservation boundaries are administered by the State of Utah under the School and Institutional Trust Lands Administration (SITLA) program, which holds certain state lands in trust to generate revenue that funds state institutions, particularly primary schools. In addition, there is land held in trust for the heirs of the original allottees, individually owned fee land, and tribal trust land within the Hill Creek Extension.⁴⁷

The Tenth Circuit Court of Appeals considered and rejected arguments that the 1894 and the 1897 Acts disestablished or diminished the Uncompahgre Reservation, finding no explicit language of cession in the Acts or in the legislative history. The Tenth Circuit therefore concluded that the Uncompahgre Reservation remains intact.⁴⁸ The Tenth Circuit subsequently confirmed this position.⁴⁹ In 2015 and 2016, the Tenth Circuit declined revisiting *Ute V* in the face of continuing challenges from the State of Utah and its subdivisions concerning the Indian country status of the Uintah and Ouray Reservation

for purposes of jurisdiction.⁵⁰ The Department treats the Uncompahgre boundary as intact today, and considers the lands contained therein as “Indian country.”⁵¹ However, the Tenth Circuit rulings do not address, much less resolve, the separate inquiry of whether the Tribe has any ownership interest in these lands or whether Section 3 of the IRA is an appropriate source of authority for the requested restoration of these lands.⁵²

(See <https://www.doi.gov/sites/doi.gov/files/uploads/m-37051.pdf>)

The following was taken from the website corpuslegalis.com.

GRANT EXTENDED TO DESERT LANDS WITHIN PART OF FORMER UTE INDIAN RESERVATION IN COLORADO

The provisions of Sections 641, 642, and 643 of this title are extended over and shall apply to the desert lands within the limits of all that portion of the former Ute Indian Reservation, not included in any national forest, in the State of Colorado, described and embraced in the Act entitled “An Act relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians,” approved July 28, 1882: *Provided*, That before a patent shall issue for any of the lands aforesaid under the terms of the said sections the State of Colorado shall pay into the Treasury of the United States the sum of \$1.25 per acre for the lands so patented, and the money so paid shall be subject to the provisions of Section 3 of the Act of June 15, 1880, entitled “An Act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same.”

No lands shall be included in any tract to be segregated under the provisions of this section on which the United States Government has valuable improvements, or which have been reserved for any Indian schools or farm purposes. (Feb. 24, 1909, Ch. 178, §§1, 2, 35 Stat. 644, 645.)⁵³

Supplementary Information:

House Bill 4511 Re: Allotment of Lands in Severalty April 1894: <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=7237&context=indianserialset>; *The following was taken from a PDF file of the Congressional Record at* <https://www.govinfo.gov/content/pkg/GPO-CRECB-1894-pt7-v26/pdf/GPO-CRECB-1894-pt7-v26-7.pdf>.

Senate.

Saturday, June 16, 1894.

The VICE-PRESIDENT. The Chair lays before the Senate a bill received yesterday from the House of Representatives. The bill (H.R. 6792) to disapprove the treaty heretofore made with the Southern Ute Indians to be removed from the Territory of Utah, and providing for settling them down in severalty where they may so elect and are qualified, and to settle all

those not electing to take lands in severalty on the west 40 miles of the present reservation and in portions of New Mexico, and for other purposes, and to carry out the provisions of the treaty with said Indians June 15 1880.⁵⁴

The following was taken from the U.S. Government Publishing website.

25 U.S. CODE § 5107 – TRANSFER AND EXCHANGE OF RESTRICTED INDIAN LANDS AND SHARES OF INDIAN TRIBES AND CORPORATIONS

Except as provided in this Act, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized under this Act shall be made or approved: Provided, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived, or to a successor corporation: Provided further, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108–374; 25 U.S.C. 2201 note), lands and shares described in the preceding proviso shall descend or be devised to any member of an Indian tribe or corporation described in that proviso or to an heir or lineal descendant of such a member in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), including a tribal probate code approved, or regulations promulgated under, that Act: Provided further, That the Secretary of the Interior may authorize any voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in the judgment of the Secretary, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

(June 18, 1934, Ch. 576, § 4, 48 Stat. 985; Pub. L. 96–363, § 1, Sept. 26, 1980, 94 Stat. 1207; Pub. L. 106–462, title I, § 106(c), Nov. 7, 2000, 114 Stat. 2007; Pub. L. 108–374, § 6(d), Oct. 27, 2004, 118 Stat. 1805; Pub. L. 109–157, § 8(b), Dec. 30, 2005, 119 Stat. 2952; Pub. L. 109–221, title V, § 501(b)(1), May 12, 2006, 120 Stat. 343.)⁵⁵

Editor's note: The material found in the following sections, concerning the case Confederated Bands of Ute Indians v. United States, is taken from a page at the website LII / Legal Information Institute (<https://www.law.cornell.edu/supremecourt/text/330/169>), administered by the Cornell Law School.

Confederated Bands of Ute Indians v. United States.

Supreme Court

330 U.S. 169

67 S.Ct. 650

91 L.Ed. 823

Confederated Bands of Ute Indians v. United States.

No. 141.

Argued Jan. 14, 15, 1947.

Decided Feb. 17, 1947.

As Amended March 31, 1947.

[Syllabus from pages 169-171 intentionally omitted]

Mr. Ernest L. Wilkinson, of Washington, D.C., for petitioners.

Mr. Marvin J. Sonosky, of Washington, D.C., for respondent.

Mr. Justice BLACK delivered the opinion of the Court.

1. Petitioners brought this action in the Court of Claims under the Act of June 28, 1938, 52 Stat. 1209, as amended, 55 Stat. 593, to recover compensation for lands made available to them by an 1875 Executive Order of the President and subsequently taken from them by the United States. Their claim was that by an Act of June 15, 1880, 21 Stat. 199, Congress had undertaken to sell these lands for the benefit of the petitioners, but that they had never been compensated for them. The Court of Claims, one judge concurring specially, made findings of fact and concluded as a matter of law that petitioners had no compensable interest in the lands because they 'never did acquire title to these * * * lands and * * * the Congress never did agree to sell them for the account of' petitioners. Ct.Cl., 64 F.Supp. 569, 571. We granted certiorari 329 U.S. 694, 67 S.Ct. 50.

2. The findings of the Court of Claims from official letters, Executive Orders and statutes incorporated in these findings were as follows: A treaty of March 2, 1868, 15 Stat. 619, between the United States and petitioners' ancestors, the Ute Indian tribes, established a reservation for them in Colorado. The northern boundary of the 15 million acres there ceded was described in the treaty as a line fifteen miles north of, and parallel to the 40th parallel of north latitude. In the 15-mile wide strip north of the 40th parallel lay the White River Valley which had been settled by the Utes as a most suitable place for grazing and cultivation. One of the two Government Indian agencies provided for the reservation by the treaty was established in that strip.

3. As a result of misunderstandings in 1869 and 1874 between the Utes and white settlers to the north as to the true location of the northern treaty boundary, a survey was made in 1875 by one Miller. Miller's instructions, however, required him to stake out a line which he admitted to the local Indian agent and to the Utes themselves to be fifteen to eighteen miles south of the true boundary described in the treaty. If Miller's line had been correct, it would have excluded from the 1868 reservation the fertile White River Valley, and would have also excluded the agency buildings which had been erected there.⁵⁶

Supplementary Information:

(From Senate Executive Document No. 29, January 7, 1880, 46th Congress, 2d Session, pp. 41-45)

The very unfortunate mistakes made by Mr. Miller in his intended survey of the northern boundary of the Ute Reserve has led to much talk and discussion as to the rights of the Ute Indians to the White River Valley. It is due to the Indians of this reserve, and to the quiet and well being of the white settlements near, that this agitation should cease; that the mistake made by Mr. Miller should be officially rectified by authorities in the Land Office; that correct maps indicating the true position of the northern boundary of the Ute Reserve in Colorado should be circulated, sent for distribution to Denver, Middle Park, and to other places. 'The treaty plainly states that the northern boundary shall be a line fifteen miles north of the fortieth parallel of latitude. All the authorities of the 'Hayden Survey,' and of all maps which I have seen, place the fortieth parallel about two miles north of the location of this agency. Mr. Miller ran his line for the northern boundary one-half a mile south of this agency, making a mistake of about seventeen and a half miles. 'I ask whether I will be supported if I endeavor to remove persons coming upon the reserve to settle or to 'prospect'; and where I am to look for assistance to do so.

Very respectfully, your obedient servant,

E.H. Danforth, United States Indian Agent.⁵⁷

(See <https://casetext.com/case/confederated-bands-of-ute-indians-v-united-states>)

4. The marking out of the erroneous Miller line greatly upset the Indians because they feared they would be driven from the White River Valley. This embarrassed the local Indian agent who had previously assured the Indians that the White River Valley lay within their reservation. He promptly reported the results of the survey and the reaction of the Indians to the Commissioner of Indian Affairs in Washington, and urged the necessity of a new survey at the earliest practica-

ble date. He stated that if the Miller survey were correct, however, the Indians would be driven from the White River Valley—‘the only farming land and stock range in this part of the reservation’—and forced to settle on a river forty miles to the south. The Commissioner, acting on this report and a statement by Miller’s attorney that Miller’s line was correct, wrote to the Secretary of the Interior that the Miller survey ‘develops the fact that the White River and surrounding valleys as well as the Agency buildings and improvements at the White River Agency lie north of the * * * boundary and consequently are not within the limits of the * * * Ute Reservation.’ He therefore recommended to the Secretary that the President be requested to issue an Executive Order to make available to the Utes additional territory north of the 1868 treaty boundary. The President, on the recommendation of the Secretary of the Interior, issued the order.⁵⁸ And thereafter the Commissioner wrote the local agent that the order included ‘all that tract of country lying between the north boundary of the Ute reservation as defined in the treaty of March 2, 1868 * * * which was the boundary surveyed by Mr. Miller. * * * This action fully protects your Indians in the peaceable possession of their improvements in the White River Valley and the Agency buildings, and will enable you to assure the Indians of the exact location of their reservation as enlarged.’ In 1879, several years after the Executive Order was issued, hostilities broke out between some of the Utes and Government representatives in which the Indian agent at White River, all the agency’s male employees, and a U.S. military detachment were killed in the so-called ‘Meeker massacre.’ H.R.Ex.Doc. No. 1, pt. 5, 47th Cong., 2d Sess. (1879) 16-19, 82-97. There have been charges and counter-charges as to who was responsible for inciting these hostilities. Whoever was responsible, it is clear that Congress, aroused by the massacre, took steps to punish the Indians who participated in it, to dispossess the Utes of their reservation, and to remove them from Colorado. Congressional action to accomplish this was provided by the Act of June 15, 1880, 21 Stat. 199, which ratified and embodied an agreement reached earlier that year between the Government and the leaders of the Utes who had promised ‘to use their best endeavors with their people to procure their consent to cede to the United States all the territory of the present Ute Reservation * * *.’ This Act authorized specific allotments to individual Indians from the lands so ceded. But § 3 provided that ‘all the lands not * * * allotted, the title to which is, by the said agreement of * * * the Ute Indians, and this acceptance by the United States, released and conveyed to the United States * * *’ would be restored to the public domain for sale as public lands. The proceeds of the sale of the land so conveyed by the Utes to the United States were, upon satisfaction of indem-

nity conditions imposed because of the massacre, to be distributed to the Indians. Thereafter, in 1882, an Executive Order declared that the lands withdrawn from the public domain by the Executive Order of 1875 and 'set apart for the use of the * * * Ute Indians * * * hereby is, restored to the public domain.'⁵⁹

5. Pursuant to an Act of 1909, 35 Stat. 781, petitioners recovered a judgment for the proceeds of certain lands sold by the Government, as well as the value of certain lands appropriated by the Government to its own use, all of which were part of the 1868 treaty lands. *Ute Indians v. United States*, 45 Ct.Cl. 440; 46 Ct.Cl. 225. Thus, except for certain treaty lands not at issue here, litigation concerning which is now pending in the Court of Claims, the only lands in Colorado for which the Indians have not been paid are those to the north of and outside the 1868 treaty reservation which were made available to them by the Executive Order of 1875. In pursuit of compensation for these Executive Order lands, petitioners have brought this action pursuant to the Act of June 28, 1938, *supra*. That Act confers jurisdiction on the Court of Claims to hear, determine, and render final judgment on all legal and equitable claims of the Utes and to award judgment for the Indians where it is found 'that any lands formerly belonging' to them 'have been taken by the United States without compensation * * *.'

6. Petitioners contend here that their predecessors understood that they not only owned the White River Valley lands, but that they also owned the Executive Order lands when, in 1880, they agreed to cede their reservation; and that Congress, by incorporating the agreement in the 1880 Act, thereby ratified it along with the Indians' understanding of it. Petitioners further contend that whether or not Congress intended to obligate the Government to account for the Executive Order lands, they knew of the Indians' understanding so that 'the understanding of the Indians having been established,' their understanding entitles them to recover. Finally they argue that the Executive Order unlike the one in issue in *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 62 S.Ct. 1095, 86 L.Ed. 1501, conveyed a compensable interest to these Indians. The Government counters that the President had no power to give a compensable interest to the Indians to lands lying outside the true 1868 treaty boundaries; that if the President intended to make available lands outside the true boundary it was only to give a transitory, possessory, and not a compensable, interest; that his intent was, in fact, only to secure the Indians in their possession of the White River Valley, but no more, on the mistaken assumption that the White River Valley had been cut off from the reservation by the Miller survey; that the 1880 Act,

neither by its terms, its legislative history, nor its administrative interpretation, suggests that Congress intended to ratify or expand the Executive Order or to compensate the Indians for the Executive Order lands; that the Indians did not have a contrary understanding; that in the face of such clear legislative language and intent, a contrary understanding of the Indians, even if established, could not justify a holding that the Indians obtained a compensable interest.

7. It is conceded that the petitioners have either been, or are currently pressing litigation in the Court of Claims by which they seek to be, compensated for the White River Valley lands, and in fact, for all of the land which was contained in the true boundaries of the 1868 reservation. The additional claim, insofar as it rests on the Executive Order of 1875, cannot be sustained. For the President had no authority to convey to the petitioners a compensable interest in the lands described in the order lying north of the true 1868 boundary. *Sioux Tribe of Indians v. United States, supra*.⁶⁰ Nor is there any indication in the findings that the President intended to convey more than a transitory, possessory interest by the 1875 Order. That order made the Indians no more than tenants at the will of the Government on that part of the land outside the true treaty reservation. *Id.* 316 U.S. at page 331, 62 S.Ct. at page 1101, 86 L.Ed. 1501. Moreover, the Court of Claims' findings of fact, as emphasized by the special concurring opinion, indicate that the Executive Order was promulgated under the mistaken belief that its issuance was necessary in order to give the Indians the use of the White River Valley lands intended to be granted to them by the 1868 treaty and from which they might otherwise have been excluded by the Miller survey. These findings do not indicate that the Commissioner, the Secretary, or the President intended the order to make available the lands it in fact described lying north of the true treaty boundary. The order was designed only to resolve the misunderstanding created by Miller about the White River Valley lands.⁶¹ The fullest possible purpose of the Executive Order has actually been carried out. For the Indians' enjoyment of the White River lands was protected during their stay on the reservation, and the lands have either already been paid for, or are the subject of pending litigation in the Court of Claims whereby the Indians seek payment for them. It is with these things in mind that we must consider petitioner's contention that they have a right to recover compensation because of the 1880 Act.

8. There is not one word in that Act showing a congressional purpose to convey the Executive Order lands, or any other lands, to the Indians. On the contrary,

the Act embodied a transaction whereby the Indians were the transferors and conveyed lands to the Government. For the value of lands so conveyed, and for no other, the Government was to make an account to the Indians after certain deductions had been made.

9. Nor is it possible to deduce from the 1880 Act a congressional purpose to transform the Executive Order into a conveyance of something more than a mere temporary and cancellable possessory right to the Indians. Neither the language of the 1880 Act, its legislative history, nor the circumstances which brought it about, justify the claim that Congress intended to expand the Executive Order into a transfer of a compensable interest in lands not included in the original treaty reservation. The Act was an aftermath of the 'Meeker massacre.' With the massacre in mind, Congress decided to remove the Indians from the Colorado reservation as part of the punishment meted out for this tragedy.⁶² The very first section of the 1880 Act prohibited any payments at all to the Indians until the Indians involved had surrendered, been apprehended, or until the President had proof that they were dead or outside the United States. Compensation for the families of the massacre victims was to be deducted from the land sale proceeds payable to the Indians. We cannot find from this background a congressional purpose to make a gift to the Indians of the Executive Order lands for which compensation is here sought. The only lands for which Congress agreed in 1880 to compensate the Indians were those that 'the title to which' the Indians then 'released and conveyed to the United States.' They could only release and convey the lands that belonged to them, and only the lands given to them by the original 1868 treaty belonged to them. It was for compensation for such lands only that Congress, in 1938, authorized this action to be maintained. Under all these circumstances, the fact that the 1880 Act required the chiefs and headmen to procure the consent of their people to the cession of 'the present Ute Reservation,' is not sufficient to attribute to Congress a purpose to treat as a part of that reservation, lands which had never been legally conveyed to the Indians and which had only been made available to them by the Executive Order for the sole purpose of making them secure in their possession of the White River Valley.

10. It is said, however, that the Indians understood in 1880 that they owned the Executive Order lands which lay north of the White River Valley; that they understood their 'present Ute reservation' to include them; that they understood that Congress undertook by the 1880 Act to sell the lands for their benefit; and that Congress was aware of this understanding. The majority opinion of the Court of Claims stated that 'in all probability' this was true. The writer of the

concurring opinion thought differently. But even if the Indians had believed that they had a compensable interest in the Executive Order lands, this fact would not necessarily have given it to them. Certainly the absence of presidential authority to give them a compensable title could not be supplied by the Indians' understanding that the President had such authority. The Sioux Indians may also have thought the President had authority to convey title to them; but the reasons on which our decision in the *Sioux* case, *supra*, rested do not indicate that our holding depended in any way upon the understanding of the Indians. Nor can this alleged understanding be imputed to Congress in the face of plain language and a rather full legislative history indicating that the 1880 Act neither conveyed nor ratified conveyance of these lands. While it has long been the rule that a treaty with Indians is to be construed so as to carry out the Government's obligations in accordance with the fair understanding of the Indians, we cannot, under the guise of interpretation, create Presidential authority where there was none, nor rewrite congressional acts so as to make them mean something they obviously were not intended to mean. *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 431, 432, 63 S.Ct. 672, 677, 678, 87 L.Ed. 492. We cannot, under any acceptable rule of interpretation, hold that the Indians owned the lands merely because they thought so. Solicitous as the Government is to carry out its promises to the Indians in good faith, we are satisfied from this record that the Government has performed all that it promised.

11. As we have pointed out, it seems obvious to us from the findings of the Court of Claims that the Executive Order was only intended to secure for these Indians' ancestors possession of the White River Valley lands conveyed to them by the original 1868 treaty, and which was jeopardized by the Miller survey.⁶³ In fact, the President had no authority to convey a compensable interest in these or other lands to the Utes. Fairly to carry out the 1868 treaty was the order's aim. The 1880 Act, we believe, did not enlarge upon the limited purpose of the Executive Order. To compensate these Indians for lands, not intended to be conveyed by the 1868 treaty, the Executive Order, nor the 1880 Act, would be to pay them for lands which neither they nor their ancestors ever owned and to which they had no claim in equity or justice, so far as the transactions here at issue are concerned. No rule of construction justifies such a result.

12. Affirmed.

13. Mr. Justice MURPHY, dissenting.

14. The United States, in my opinion, is morally and legally obligated to pay for the land in issue in this case. The Executive Order of 1875 by its terms set aside certain land up to the 'first standard parallel north' for the use of the Ute Indians 'as an addition to their present reservation.' That order alone, of course, could convey no compensable interest to the Indians under the rule of *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 62 S.Ct. 1095, 86 L.Ed. 1501. But events subsequent to the issuance of the Executive Order in this case make inapplicable the principle of the Sioux case. In 1880 the United States and the Ute chiefs and headmen entered into an agreement whereby the latter promised 'to use their best endeavors with their people to procure their consent to cede to the United States all the territory of the present Ute Reservation in Colorado.' Congress thereupon passed the Act of June 15, 1880, which recited in its preamble that the chiefs and headmen had 'submitted to the Secretary of the Interior an agreement for the sale to the United States of their present reservation in the State of Colorado.' The Act then incorporated the agreement previously made and provided that all unallotted lands should be deemed to be released and conveyed to the United States.

15. It seems clear to me that by 1880 the term 'present reservation' included the land which the Executive Order of 1875 stated had been set aside as an addition to the then present reservation. And when the 1880 agreement and the 1880 Act referred to 'present reservation' they must have included that additional land. Adding this informal acknowledgment by Congress of the expanded reservation to the occupation of the land by the Indians and their understanding that it belonged to the reservation, a compensable interest becomes evident. It is immaterial that there was no formal documents conveying a fee simple interest to the Indians; it is likewise irrelevant that there was no formal acknowledgment of the Indian title. *Spalding v. Chandler*, 160 U.S. 394, 16 S.Ct. 360, 40 L.Ed. 469; *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 67 S.Ct. 167. It is enough that the Indians had the right to possess and occupy the land and that the Indians fairly understood that to be the case. An acknowledgment by Congress, however informal, then adds a legal obligation to the moral duty of the United States to pay for the land involved. Such is the situation here.

16. The Court indicates, however, that the Executive Order of 1875 does not mean what it says. It clearly set apart for the use of the Indians 'as an addition to the present reservation' all the described land up to the 'first standard parallel north.' But it is now suggested that those responsible for the promulgation of

that order did not really intend to set aside all the land up to the ‘first standard parallel north,’ despite the explicit language used. It is said, rather, that the order actually was designed to affect only the White River Valley lands—lands which are some nine miles south of the ‘first standard parallel north.’ That interpretation of the intent of the framers of the order would make the northern boundary of the Executive Order land coterminous with the northern boundary of the true treaty reservation.

17. But there is nothing in the findings of the Court of Claims to justify such an interpretation. To disregard the plain words of the order by subtracting a nine-mile strip from a clearly worded description requires definite findings to that effect which are supported by the record. It is not our function, of course, to supply those findings ourselves. Nor can we infer them from the decision of the Court of Claims. That court alone has the power and the duty to make the necessary findings on material issues. 53 Stat. 752, 28 U.S.C. § 288, 28 U.S.C.A. § 288; *United States v. Causby*, 328 U.S. 256, 267, 268, 66 S.Ct. 1062, 1068, 1069. If it is material that the framers of the Executive Order intended to set aside less land than that described in the order, the case should be remanded to the Court of Claims so that it can make the necessary findings in this respect.

18. Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS join in this dissent.⁶⁴

PSL Staff and Editor’s note: The text regarding “bad men clauses” in the following sections is taken from two sources: 1) an undated amicus brief submitted to the U.S. Supreme Court located through the website of Cackle Legal Briefs, and 2) a 2014 Harvard Law Review article titled “A Bad Man Is Hard to Find” at the Harvard Law Review website.

BAD MEN CLAUSES AS A POSSIBLE MEANS OF REDRESS

The 1868 Treaties Included “Bad Men” Clauses to Protect Indians Against the Criminal Acts of Non-Indians.⁶⁵

Nine new treaties with thirteen tribal signatories resulted from the Indian Peace Commission’s activities and negotiations with tribes. In each of these treaties, the tribes who were signatories thereto agreed to cease any and all wars against the United States. E.g., U.S.- Kiowa and Comanche, art. 1, Oct. 21, 1867, 15 Stat. 581 (“From this day forward all war between the parties to this agreement shall forever cease”). To prevent future wars, each of these treaties also contained nearly identical provisions to punish “bad men” who committed “wrongs” against the other nation’s citizens. If non-Indians committed crimes

against Indians, they were to be arrested and prosecuted by the United States, and the United States would provide monetary compensation to the injured Indian(s). If Indians committed crimes against non-Indians, they were to be turned over to the United States for prosecution, and if the tribe refused to do so, money to compensate the injured party for the wrongs committed would be deducted from the tribes' annuities. In both instances, "proof" was to be provided to the Indian agent of the wrongs alleged. In this way the treaties drafted by the Indian Peace Commission were supposed to address the concerns raised by tribal leaders that had led to prior wars. Crime would be reduced, false claims levelled against Indians and non-Indians would be discovered at the outset, and when crimes did occur, rather than retaliation through war, punishment would be meted out against the offender through the criminal and civil court systems.⁶⁶

Legal Analysis of "Bad Men Clauses" in the *Harvard Law Review*

Article I of the treaty with the Northern Cheyenne and Northern Arapaho tribes is typical of these "bad men" provisions:

From this day forward peace between the parties to this treaty shall forever continue.... If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws.... And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating or because of his violating the provisions

of this treaty or the laws of the United States shall be reimbursed therefor.”⁶⁷

The treaty with the Ute was not concluded in the field but rather in Washington, D.C., during a late winter visit by the Ute chiefs. See Treaty Between the United States of America and the Tabeguache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Ute Indians, U.S.–Ute, Mar. 2, 1868, 15 Stat. 619, 619. Every other treaty containing the “bad men” clauses placed those clauses in the first article of the treaty; in contrast, the Ute treaty buried these clauses in Article VI. See *id.* At 620. Moreover, the “bad men” provision of the Ute treaty was not preceded by a declaration of enduring peace. See *id.* The familiar language at the end of the other “bad men” clauses—authorizing the President to make regulations, requiring the Commissioner of Indian Affairs to evaluate claims for damages, and prohibiting lawbreakers from recovering—is entirely missing from the treaty with the Utes.⁶⁸

A BROADER VIEW OF THE “BAD MEN” PROVISIONS

To interpret treaties concluded almost a century and a half ago is no trivial task; to make sense of nine separate treaties concluded at different times with different tribes is still more daunting. After all, “Indian treaties, when all is said and done, were a political anomaly.” Father Francis Paul Prucha’s pithy summary maps easily onto the legal. The United States and the Indian tribes enjoy a relationship like nothing else in the American legal structure; correspondingly idiosyncratic is the interpretation of the treaties that bind them. If “the solemn pledge of the United States to its wards is not to be construed like a money-lender’s mortgage,” then a different interpretive approach is needed.⁶⁹

First and foremost, it would be helpful to view these nine treaties as agreements that ought to be understood, and not as collections of sentences to be construed. Courts are consistent in their devotion to text, but these treaties were not negotiated word by word, and moreover, neither side was interested in perfecting language to match intent. These tribes had different understandings of the treaty-making councils than did the white peace commissioners, and this difference should cause courts to hesitate to strictly apply the traditional rules of contract interpretation. Professor Raymond DeMallie illustrates exactly how divergent these understandings were:

For plains Indians, the council was an end in itself. What was important was the coming together in peace, smoking the pipe in common to pledge the truthfulness of all statements made, and the exchange of opinions.... Thus, from the Indians’ point of view, the council was the agreement.

For white Americans, the council with its associated feasts and gift giving was only a preliminary to the real agreement, which was embodied in written form.⁷⁰

Thus, Anglo-American concepts of contract law should not in fairness be applied to the interpretation of Indian treaties. The parol evidence rule, the finality of fully integrated agreements, the tyranny of objective reasonableness in interpretation—these constructs were alien to the tribes. Even the sacred signature—the pledging of one’s word to the agreement—was not understood as such.⁷¹

Text in this next section was taken from a webpage hosted by the Native American Rights Fund (NARF) that details the following case, Jones v. United States.

2017 WL 382373

Only the Westlaw citation is currently available.

United States Court of Appeals,
Federal Circuit.

Debra Jones, as Personal Representative of the Estate of Todd R. Murray, Deceased, for and on Behalf of the Heirs of Todd R. Murray, Arden C. Post, Individually and as the Natural Parents of Todd R. Murray, Ute Indian Tribe of the Uintah and Ouray Reservation, Plaintiffs-Appellants

v.

United States, Defendant-Appellee

2015-5148

Decided: January 27, 2017

Appeal from the United States Court of Federal Claims in No. 1:13-cv-00227-MBH, Judge Marian Blank Horn.

THE UTE TREATIES

The predecessor to the modern Ute Tribe entered into two treaties with the United States, one in 1863 and one in 1868. *See* Treaty with the Utah Tabeguache Band, Oct. 7, 1863, 13 Stat. 673 (hereinafter “1863 Treaty”); Treaty with the Ute, Mar. 2, 1868, 15 Stat. 619 (hereinafter “1868 Treaty”).

The Ute Tribe and the United States had a particularly acrimonious relationship prior to the 1863 Treaty, with several rounds of stalled treaty implementations and several skirmishes occurring between the parties. A Ute War Council decided to forgo war in 1863 after being persuaded by Ouray, a leader of the Tabeguache Ute Tribe, that armed resistance to the United States would be futile. *Id.* Ouray led the Ute negotiations, which resulted in the Ute Tribe

ceding to the United States “among the largest and most valuable tracts of land ever ceded to the United States,” according to Commissioner of Indian Affairs Dole. *Id.* at 216. The Tabe-guache Band admitted that they reside within the United States, acknowledged the United States’ supremacy, and claimed their protection, 1863 Treaty, art. 1; the United States agreed to send monthly payments in goods and provisions, *id.*, art. 2; and the Treaty set the stage for the creation of a large Ute reservation in Colorado’s mountain valleys in the 1868 Treaty.

The 1868 Treaty established the Ute reservation. In common with the 1863 Treaty, its goal was peace between the Ute Tribe and white settlers. *See Tsosie v. United States*, 825 F.2d 393, 395 (Fed. Cir. 1987) (noting nine treaties made in 1868 containing bad men provisions with “peace as their object”).

The 1868 Treaty included the following particularly relevant provisions.

Article 2 reads:

[T]he United States now solemnly agree that no persons, except those herein authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law shall ever be permitted to pass over, settle upon, or reside in the Territory described in this article, except as herein otherwise provided.

1868 Treaty, art. 2. Article 6, the primary provision at issue in this case, reads as follows:

If bad men among the whites or among other people, subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained. *Id.* at art. 6.

We refer to this provision as the “bad men provision” throughout this opinion. The 1868 Treaty also includes a requirement for a plaintiff seeking damages under the bad men provision to exhaust administrative remedies before filing a claim. *See* 1868 Treaty, Art. 5; *Jones II*, 122 Fed. Cl. at 510. This provision is not at issue on appeal.⁷²

Finally, Secretary of the Interior Carl Schurz, on May 11, 1880, made this statement to the House of Representatives, 46th Congress, a few months after the “Meeker Massacre” at the White River Agency (*making clear that the federal government and the Department of the Interior would not honor previous treaties with Ute Peoples nor invoke “Bad Men Clauses”*).

Editor's note: The following text comes from a PDF file of the Agreement with Ute Indians of Colorado, downloaded from the University of Oklahoma College of Law Digital Commons website.

It has seemed to me, and, I think, to a great many who have studied the Indian problem with care, that the system of large reservations, as has hitherto prevailed, is not only no longer desirable either in the interest of the Indians or of the whites, but will, in the course of time, become utterly untenable. As our white settlements in the West multiply, as the development of the country advances, available lands become more and more scarce and valuable, and so it is not unnatural that the withholding of large tracts from settlement and development so as to maintain a savage aristocracy in the enjoyment of their chivalrous pastimes, should be looked upon by many a system incompatible with the progress of civilization and injurious to the material interests of the country. As an inevitable consequence, we have witnessed many encroachments, lawless and wrongful in character: upon Indian lauds and rights, and constant efforts to drive the red men from the reservations belonging to them. This has kept the Indians in a state of uncertainty and restlessness, and led to many deplorable outrages and Indian wars. As a matter of course, this state of things has retarded the progress and impaired the well-being of the Indians themselves. However well disposed the government may be to maintain the title of the Indians to their reservations—and undoubtedly the government is and will remain so disposed—still it is evident that the government will not always be able in all things to control the action of our Western people, and as sensible men we must make up our mind to the fact that as long as the Indians hold very large tracts of land, in great part useless to themselves and useless to other people, their tenure will, under existing circumstances, become practically more and more precarious. It is most desirable for the interest of the Indians themselves, therefore, that we should substitute for the system of large reservations another system that will protect the rights and interests of the Indians without standing in the way of the progress and development of the country.⁷³

ENDNOTES

- 1 Southern Ute Indian Tribe, © 2024, *History – Southern Ute Indian Tribe*, www.southernute-nsn.gov, <https://www.southernute-nsn.gov/history/>
- 2 Southern Ute Indian Tribe, © 2024, *Chronology*, www.southernute-nsn.gov, <https://www.southernute-nsn.gov/history/chronology/>
- 3 The Church of Jesus Christ of Latter-Day Saints, 2022/© 2024, *Abiquiu Indian Agency (New Mexico)*, in *FamilySearch*, Intellectual Reserve, Inc., citing Hill, Edward E., Comp., 1981, *Guide to Records in the National Archives of the United States Relating to American Indians*, National Archives and Records Service, General Services Administration, 147-148, in References, footnote 1, [https://www.familysearch.org/en/wiki/Abiquiu_Indian_Agency_\(New_Mexico\)](https://www.familysearch.org/en/wiki/Abiquiu_Indian_Agency_(New_Mexico))
- 4 The Church of Jesus Christ of Latter-Day Saints, 2022/© 2024, citing Hill, Edward E., 1974, *The Office of Indian Affairs, 1824-1880: Historical Sketches*, Clearwater Publishing Co., New York. FS Library Book 970.1 H551o, in References, footnote 3. [https://www.familysearch.org/en/wiki/Abiquiu_Indian_Agency_\(New_Mexico\)](https://www.familysearch.org/en/wiki/Abiquiu_Indian_Agency_(New_Mexico))
- 5 Treaty of March 2, 1868, Web © 2016, AccessGenealogy.com Collection: *Indian Treaties Acts and Agreements*, <https://accessgenealogy.com/colorado/treaty-of-march-2-1868.htm>
- 6 Harvard Law Review, 2014, Notes, Indian Law: A Bad Man Is Hard to Find, *Harvard Law Review*, 127(8), 2537, retrieved January 24, 2024, from https://harvardlawreview.org/wp-content/uploads/2014/06/vol127_a_bad_man_is_hard_to_find2.pdf
- 7 Ibid., *see also* footnotes 111 and 112 on page 2537 of the article.
- 8 Ibid., 2539.
- 9 Horn, J. C., (n.d.), Indian Agencies and Agents, in *Colorado Encyclopedia*, History Colorado, <https://coloradoencyclopedia.org/article/indian-agencies-and-agents>
- 10 Rust, J., [Forest Archeologist], 2017, *Ashley National Forest Assessment: Tribal Uses Report, Public Draft*, 8. Accessed at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd564553.pdf
- 11 Ibid., 9.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Ibid.
- 16 Jorjani, D. H., 2018, Memorandum M-37051, *The Authority of the Secretary to Transfer Areas Within the Uncompahgre Reservation under Section 3 of the Indian Reorganization Act*, United States Department of Interior, 2, <https://www.doi.gov/sites/doi.gov/files/uploads/m-37051.pdf>
- 17 Ibid.
- 18 Ibid., 3, *see also* his footnote 9 citation: 24 Stat. 548 (Mar. 3, 1887),
- 19 Ibid., 3, *see also* his footnote 10 citation: Annual Reports of the Commissioner of Indian Affairs (1887) at XLIII, (1888) at L, (1889) at 40. *See also* entries for Utah Midland Railway

(second) at <http://utahrails.net/utah-rrs-inc-8.php>.

20 Ibid., 3.

21 Ibid., 3, *see also* his footnote 11 citation: 28 Stat. 286, 337-338 (“1894 Act”).

22 Ibid., 3, *see also* his footnote 12 citation: *Uncompahgre Indians*, H. Rpt. No. 660, 53rd Cong., 2nd Sess. (1894) (citing correspondence between the Secretary of the Interior and the Assistant Attorney General of the United States).

23 Ibid., 3.

24 Ibid., footnote 8.

25 Ibid., 3-4, *see also* his footnote 13 citation: 30 Stat. 62, 87 (“1897 Act”).

26 Ibid., 4, *see also* his footnote 14 citation: *See Indian Lands-Allotment-Uncompahgre Utes*, 25 L.D. 97, 103 (Aug. 5, 1897).

27 Ibid., 4, *see also* his footnote 15 citation: *See Act of Mar. 1, 1899* (30 Stat. 924, 940-941) (authorizing the Secretary to approve 83 allotments made by the Uncompahgre Commission to Uncompahgre Ute Indians “within the former Uncompahgre Indian Reservation in Utah.”). The BLM’s records reflect that there were approximately 94 Homestead Act and 29 Stock Raising Homestead Act Patents issued between 1911 and 1945. There were also approximately 105 non-Indian land sales between 1904 and 1996. *See also Act of March 3, 1903*, 32 Stat. 982, 998 (addressing disposition of pre-1891 mineral claims and opening even numbered sections of the “former Uncompahgre Indian Reservation” for disposition under the applicable mineral laws).

28 Jorjani, 2018, 4, *see also* his footnote 16 citation: “Grazing Withdrawal Order” issued under the authority of section 4 of the Act of March 3, 1927 (44 Stat. 1347) providing “that hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: Provided, That this shall not apply to temporary withdrawals by the Secretary of the Interior.”

29 Ibid. 4, *see also* his footnote 17 citation: *See supra n. 2*, [which refers back to his footnote 2 on p. 1—Act of June 18, 1934, Ch. 576, § 3, 48 Stat. 984 codified at 25 U.S.C. § 5103 (“section 3”)].

30 Ibid., 4, *see also* his footnote 18 citation: 54 I.D. 559, Sept. 19, 1934 (Secretary approving Commissioner’s recommendation of Aug. 10, 1934 for twenty seven reservations) as amended on Nov. 2, 1934 (including three additional reservations).

31 Ibid., 5, *see also* Jorjani, 2018, 4, footnote 18.

32 Ibid., 5.

33 Ibid., 5, *see also* his footnote 20 citation: Agreement, Vernal, Utah (Jul. 10, 1935, approved by Secretary on Jul. 20, 1935) (“1935 agreement”).

34 Ibid., 2018, 5, *see also* his footnote 21 citation: *Hearings before a Subcommittee of the Committee on Public Lands and Surveys-U.S. Senate, 681 Cong.*, part 6 (Feb 16, 17, 1943); Proposed Adjudication of Grazing Privileges of Indians and Non-Indians in Unit G, District No. 8, Utah, Memorandum to the Secretary at 10 (Dec. 10, 1946) (discussing history of range

use dispute and ill-fated evolution of Congressional efforts to permanently recognize Tribal interests within a “new” reservation).

35 *Ibid.*, 5, *see also* his footnote 22 citation: Assistant Secretary’s Approval of Commissioner of Indian Affairs Recommendation on Extension of 1935 Agreement (Nov. 25, 1936).

36 *Ibid.*, 5, *see also* his footnote 23 citation: *See* Agreement between the Grazing Service and the Office of Indian Affairs, 2-3 (*approved by* Secretary on Jun. 14, 1943). Section 10 of the Taylor Grazing Act requires that all fees be deposited in the United States Treasury with 50% being paid to the state where the grazing districts are situated. 48 Stat. 1269 (Jun. 28, 1934) *as amended by* 49 Stat. 1976 (Jun. 26, 1936).

37 *Ibid.*, 5, *see also* his footnote 24 citation: 2 Fed. Reg. 2563 (Dec. 2, 1937).

38 *Ibid.*, 5-6, *see also* his footnote 25 citation: 10 Fed. Reg. 12409 (Oct. 2, 1945). Under the 1902 Act (32 Stat. 263), the remainder of the unallotted land on the Uintah Reservation would be restored to the public domain for the disposition under the public land laws with provision that certain of the sales proceeds would be used for the benefit of the Tribe. The time for the opening was extended in 1903, 1904, and 1905 through various acts and the “Uintah Indian Reservation” was proclaimed open for entry under the homestead and town site laws on July 14, 1905. These acts referred to the “Uintah Reservation” and did not apply to the lands that were withheld for the Uncompahgre Utes.

39 *Ibid.*, 6, *see also* his footnote 26 citation: 10 Fed. Reg. 12409 (Oct. 2, 1945).

40 *Ibid.*, 6, *see also* his footnote 27 citation: *Proposed Adjudication of Grazing Privileges of Indians and Non-Indians in Unit G, District No. 8, Utah*, Memorandum to the Secretary at 10 (Dec. 10, 1946).

41 *Ibid.*, 6, *see also* his footnote 28 citation: 62 Stat. 72, 73-78.

42 *Ibid.*, 6, *see also* his footnote 29 citation: 13 Fed. Reg. 4105-4106 (Jul. 17, 1948) (The order detailed the existing public land law authorities and an application process for the disposal of 580,000 acres that fell within the Uncompahgre Reservation but outside of the Hill Creek Extension area.)

43 *Ibid.*, 6, *see also* his footnote 30 citation: *See Ute Indian Tribe of the Uintah and Ouray Reservation, an Indian Reorganization Act Corporation, for and on behalf of the Uncompahgre Band of Indians v. United States*, Indian Claims Commission Docket No. 349, Petition at paragraph symbol 12 and pg.8 (Aug. 11, 1951). The ICC’s scope of jurisdiction was to adjudicate specific causes of action accruing before Aug. 13, 1946. 60 Stat. 1049. The Indian Tucker Act (28 U.S.C. § 1505) was passed in 1949 to give the United States Court of Federal Claims jurisdiction over actions accruing after Aug. 13, 1946.

44 *Ibid.*, 6, *see also* his footnote 31 citation: *Ute Indian Tribe of the Uintah and Ouray Reservation, an Indian Reorganization Act of Corporation, for and on behalf of the Uncompahgre Band of Indians v. United States*, 12 ICC 707 (Findings of Fact on the Stipulated Settlement of Claims and Offsets), 725 (Opinion of the Commission), 728a (Final Judgement) (Feb. 18, 1965).

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45 Ibid., 6, *see also* his footnote 32 citation: 14 ICC at 709, 726 (Feb.18, 1965).

46 Ibid., 7, *see also* his footnote 33 citation: Available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=98981>

47 Ibid., 7.

48 Jorjani, 2018, 7, *see also* his footnote 34 citation: *Ute Indian Tribe v. Utah*, 773 F.2d 1087, 1092 (10th Cir. 1985) (en banc) (‘ *Ute III*’), *cert. denied*, 479 U.S. 994 (1986).

49 Ibid., 7, *see also* his footnote 35 citation: In *Ute V*, 114 F.3d 1513, 1519, 1529 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107 (1998), the Tenth Circuit concluded that, although the Supreme Court held that the Uintah Valley Reservation had been diminished in *Hagen v. Utah*, 510 U.S. 399 (1994), its prior holding in *Ute III* remained in effect as *Hagen* did not directly address the status of the Uncompahgre Reservation.

50 Ibid., 7, *see also* his footnote 36 citation: *Ute VI*, 790 F.3d 1000 (10th Cir. 2015); *Ute VII*, 832 F. 3d 1220 (10th Cir 2016), *cert. dismissed*, 137 S. Ct. 2328 (2017).

51 Ibid., 7, *see also* his footnote 37 citation: *See* Brief for the United States as *Amicus Curiae* at 5, n. 3 (Oct. 19, 2015), *Ute Indian Tribe v. Myton*, 832 F.3d 1220 (10th Cir. 2016). “Indian country” jurisdiction, however, should not be confused with land ownership.

52 Ibid., 7.

53 Grant Extended to Desert Lands Within Part of Former Ute Indian Reservation in Colorado, 43 U.S.C. Ch. 14 § 647, 1909, CorpusLegalis.com, retrieved January 29, 2024, from <https://corpuslegalis.com/us/code/title43/grant-extended-to-desert-lands-within-part-of-former-ute-indian-reservation-in-colorado>

54 U.S. Senate, 1894, *Congressional Record*, retrieved from <https://www.govinfo.gov/content/pkg/GPO-CRECB-1894-pt7-v26/pdf/GPO-CRECB-1894-pt7-v26-7.pdf>

55 Title 25 – Indians, 25 U.S.C., United States Code, 2011 Edition, U.S. Government Publishing Office, www.govinfo.gov, retrieved January 29, 2024, from <https://www.govinfo.gov/content/pkg/USCODE-2011-title25/html/USCODE-2011-title25.htm>

56 *Confederated Bands of Ute Indians v. United States*, n.d., LII / Legal Information Institute, Cornell Law School, retrieved January 29, 2024, from <https://www.law.cornell.edu/supreme-court/text/330/169>

57 *Confederated Bands of Ute Indians v. United States*, 1946, 64 F. Supp. 569, Casetext.com, retrieved January 29, 2024, from <https://casetext.com/case/confederated-bands-of-ute-indians-v-united-states>

58 *Ute Indians v. United States*, n.d., *see* footnote 1: The Executive Order of November 22, 1875, 1 Kappler, Indian Affairs, Laws and Treaties, p. 834 (1904) is as follows:

“It is hereby ordered that the tract of country in the Territory of Colorado lying within the following-described boundaries, *viz*: commencing at the northeast corner of the present Ute Indian Reservation, as defined in the treaty of March 2, 1868 (Stats. at Large, vol. 15, p. 619); thence running north on the 107th degree of longitude to the first standard parallel north;

thence west on said first standard parallel to the boundary line between Colorado and Utah; thence south with said boundary to the northwest corner of the Ute Indian Reservation; thence east with the north boundary of the said reservation to the place of beginning, be, and the same hereby is, withdrawn from sale and set apart for the use of the several tribes of Ute Indians, as an addition to the present reservation in said Territory.”

59 Ibid.

60 Ibid., *see* footnote 2: Cf. Executive Order of August 17, 1876, which interpreted a treaty so as to ‘set apart (certain land) as a part of the Ute Indian Reservation, in accordance with the first article of an agreement made with said Indians and ratified by Congress. * * *’ *See* 1 Kappler, 1904, p. 834.

61 Ibid., *see* footnote 3: The Court of Claims did not find this as an ultimate fact. But the correspondence which plainly shows it was incorporated in the findings. This Court has said with reference to findings of the Court of Claims that the ‘absence of the finding of an ultimate fact does not require a reversal of the judgment if the circumstantial facts as found are such that the ultimate fact follows from them as a necessary inference.’ *United States v. Wells*, 283 U.S. 102, 120, 51 S.Ct. 446, 452, 75 L.Ed. 867. *United States v. Wells*, 283 U. S. 102, 283 U.S. 120.

62 Ibid., footnote 4 citation: *See* S. 772 and S.Res. 51, 10 Cong.Rec. pt. 1 (1879) 30, 77; H.Res. 142, 10 Cong.Rec. 44; H.R. 2420, 10 Cong.Rec. 17; H.Res. 154, 10 Cong.Rec. 113; H.R. 50 2, 10 Cong.Rec. pt. 2 (1880) 1538.

63 Ibid., footnote 5 citation: *See* 67 S.Ct. 654, *supra*.

64 Ibid.

65 *United States of America, Petitioner, v. Joshua James Cooley, Respondent*, No. 19-1414, n.d., On Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit, Brief for Indian Law and Policy Professors as Amici Curiae Supporting Petitioner, 21. https://www.supremecourt.gov/DocketPDF/19/19-1414/166468/20210115124745975_Route1%20Cooley%20Brief.pdf, located through Cockle Legal Briefs, <https://www.cocklelegalbriefs.com/>

66 *United States v. Cooley*, (n.d.), 21-22. [*See also* footnote 4 on p. 22 in the brief: S. Exec. Doc. No. 13, *supra*, at 48 (Ely Parker stated during the investigation following the attack on Fetterman’s troops that “[i]n my opinion nothing could occur that would tend more strongly to advance the happiness of the Indians, and attach them firmly to the United States government, than the realization of the benefits of an impartial dispensation of justice among themselves and between them and the whites... I should deem very desirable, and I think would result in the greatest good in checking mischief, by summarily punishing lawlessness and crime, whether committed by whites or Indians”).

67 *Harvard Law Review*, 2014, 2525-2526.

68 Ibid., 2527, *see* footnote 40 on page 2527 of the *Harvard Law Review* article. TREC Ute 1 Report text is taken from this footnote.

69 Ibid., 2536, *see also* footnote 107 on that page.

70 Ibid., *see also* footnote 109 on page 2536.

71 Ibid.

72 *Jones v. United States*, n.d., Indian Law Bulletins, National Indian Law Library (NILL), Native American Rights Fund (NARF), retrieved February 2, 2024, from https://narf.org/nill/bulletins/federal/documents/jones_v_united_states.html

73 H.R. Rep. No. 1401, 1880, 46th Cong., 2nd Sess. *Agreement with Ute Indians of Colorado*, [statement of Secretary of the Interior Carl Schurz with regard to the agreement entered into with the Ute Indians], The University of Oklahoma College of Law Digital Commons, <https://digitalcommons.law.ou.edu/indianserialset/2964/>, download retrieved March 9, 2024, from <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=3963&context=indianserialset>

PART II

Narrative of Ute History

ANGLO-AMERICAN INTERACTIONS POST 1846

In 1846, during the Mexican-American War, the U.S. Army came marching into Nuevo Mexico. In short order, General Stephen W. Kearny set up an interim government and system of laws called the “Kearny Code.” At the United States’ first court session in Taos in April 1847, following an insurrection against the forced occupation of the U.S. Army, several men were tried for a variety of crimes. In total, 28 men, all Hispanic or Pueblo peoples, were ultimately hanged for murder or treason. This was prior to the Mexican Republic formally ceding the region to the United States in 1848. Kearny’s provisional military government operated until 1850. The Territory of New Mexico was an incorporated territory of the United States from September 9, 1850 until January 6, 1912. Territorial boundaries were somewhat abstruse.

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During the initial period of armed residency, several skirmishes took place between Nuuchiu (Ute) bands of Kapuuta and Moughwach and the U.S. military, while the Weeminuche and Tabeguache tended to remain aloof. Both sides eventually became convinced that peaceful relations would be preferable, although each had disparate goals and differing perceptions in regard to the negotiation process. The Treaty of Abiquiú was signed in 1849 and ratified in 1850, providing for safe passage of settlers crossing Ute territory and placing Ute Peoples “lawfully and exclusively under the jurisdiction of the Government of said States: and to its power and authority they now unconditionally submit.”¹ It also provided the U.S.

government the right to create Indian agencies across Ute lands and established boundaries between the U.S. and the Ute nation.

Kaniache was recognized as the leader of the Moughwach band of Ute People by the military in 1849.² During this time period, the Moughwach regularly camped along the Chama River near the village of Abiquiú and in the vicinity of Taos.³ They also frequented the San Luis Valley, regularly trading with Mexican and Anglo-American settlements. Kaniache has been confused with Chico Velásquez, another notable Ute leader who has been alternately portrayed as a brutal savage or an individual of peace and justice. Kaniache, too, has been described as a man of honor or, paradoxically, deceitful and disreputable.

Prior to the treaty being negotiated, in February 1849, two men, former members of the benighted Fremont expedition into the San Juan Mountains, departed Taos to travel to a cache of supplies and medical equipment that had been left behind. These men, Dr. Kerns and Bill Williams, were accompanied by several Mexicans, employed to manage the livestock and provisions. Williams and Kern were subsequently killed. It was presumed that Utes had murdered the two and taken their supplies and stock, even though a few of the Mexican employees were captured with some of the goods and equipment belonging to the doctor and his companion.⁴

During this time period, a company of New Mexico Volunteers was stationed in Abiquiú under Captain Chapman. Chapman had asked Kaniache to bring in some of the other Moughwach and Kapuuta chiefs for peace talks. Meanwhile, one Lieutenant Joseph Whittlesey had proceeded from Taos with the First Dragoons in order to find and chastise the Utes for the recent conflicts with the U.S. Army. When Kaniache brought several of the chiefs within a two day ride of the village, word reached them of Whittlesey's punitive mission and the chiefs refused to continue on to Abiquiú. The First Dragoons had already attacked a Ute encampment north of Taos and had driven the survivors into brutal winter weather. Word of this had spread.⁵

When Kaniache arrived in Abiquiú alone, he was taken captive and accused of having slain Williams and Kern without any evidence whatsoever. Ironically, his fellow prisoners were the Mexicans found with the belongings of the murdered men. After three days of incarceration and overhearing a guard assert that he would be executed the following day, Kaniache removed his clothing and made his escape, suffering only minor wounds.⁶ Despite this, the treaty was signed a few months later under the auspices of James S. Calhoun, territorial governor. An agency was opened in Taos the following year. The main signatory, Quixiachigiate (as Principal Chief), was probably Kaniache (also known as Kaniatse). According to Dr. Omer Stewart, who was a respected anthropologist and professor at the University of Colorado, the "n" in the name was changed to an "x" in the printed version of the treaty.⁷ Names of Indian signatories were, of course, always spelled variably and creatively by those recording and interpreting. If, indeed, the Principal Chief was Kaniache, this speaks to the inviolate courtesy and manners of the Ute leader. Not only did he proceed with the treaty negotiations and agree-

ments after having been falsely accused, but he did so in the company of two controversial witnesses: Lieutenant Whittlesey and the brother of Dr. Kern.

Because of the growing presence of Mexicans and whites, as well as of militant Cheyenne, Comanche and Arapaho in traditional Ute buffalo hunting territory, the Moughwach and Kapuuta bands did not dare to hunt too far into the plains east of the mountains. More Anglo-American settlement also meant a growing scarcity of game and, compounding the growing food shortage, annuities promised by the Abiquiú Treaty failed to arrive. As a result, the Utes tended to raid Anglo and Mexican settlements; as their desperation increased, so did their depredations. Therefore, believing its creation was meant to limit incursions from other plains tribes and white squatters, the Utes did not oppose the construction of Fort Massachusetts on the flanks of Mount Blanca.⁸

The Jicarilla Apache and the Moughwach Utes were frequently allied and extensively interrelated. In 1850, Colonel George A. McCall, inspector general in Taos, reported, "The forays which the Apaches make upon the Mexicans are incited by want; they have nothing of their own and must plunder or starve."⁹ The Utes were frequently blamed for depredations committed by the Jicarilla or assumed to have been involved in raids carried out by the Apache, such as the "White Massacre." As depredations on settlements in the San Luis Valley escalated, the American authorities, such as Governor James Calhoun, restricted the trade of firearms with the Utes while allowing unrestricted trade with the other plains tribes. Northern tribes were also presented more gifts and annuities in agreements such as the Treaty of Fort Laramie of 1851 and the Fort Atkinson Treaty of 1853. This angered the Ute People, who had been attempting, for the most part, to honor the peace negotiated in Abiquiú.

Indian agent John Greiner wrote on October 20, 1851 that a large party of Kiowa and Arapaho attacked a "Eutaw village" near Red River on the 4th of that month, about 30 miles from Taos, and stole about 50 head of horses and mules and took two women and four children. On the 15th, they made another attack and drove off almost all remaining stock. According to Greiner, the military could do nothing to offer assistance and "I know of no remedy to check these outrages." He also stated that the "Eutaws are peaceable and kindly disposed toward our Citizens, and have behaved well." Tellingly, he added that preparations were being made by "Citizens of this Valley & others" to settle on the lands the Utes were forced to abandon in the region of Los Conejos.¹⁰ By 1852, Greiner believed the Utes to be entirely peaceful, as evidenced by the fact that a merchant named John M. Francisco, sutler at Fort Massachusetts, was given a license to trade with them.¹¹

In the early 1850s, Ute chiefs such as Kaniache and Chico Velásquez met several times with David Meriwether, governor of New Mexico Territory (encompassing much of what is now southern Colorado). They reasonably asked for firearms (to enable them to hunt and defend themselves from the Arapaho, Comanche and Cheyenne), recognition of traditional territory and, of course, the rations and medicine provided by the 1849 treaty.¹² In the summer of 1854,

several of the most prominent Ute leaders (it is not clear whether Kaniache attended) met in council with Governor Meriwether, Christopher “Kit” Carson (the Indian agent appointed in 1853), and several other Anglo-American authorities. When the council had concluded, the Utes were provided with presents, among which were blanket coats.¹³

Chico Velásquez may have been born Jicarilla Apache, at least according to Governor Meriwether, but he was a respected Ute leader. In 1849, he prevented a group of hostile Ute and Jicarilla raiders from rustling the entire Fort Union cattle herd, as noted by Lieutenant Colonel Cooke, who was greatly impressed by this act of civility. In addition, Velásquez and a Kapuuta chief, Temuché, captured and turned over a wanted murderer to American authorities. He was known by Meriwether and others as an influence for moderation and friendship toward Anglo-Americans. Conflictingly, however, Velásquez was considered to be a murderous individual by French trader Augustus Lacome, who advised James Calhoun to never trust him. He was also luridly documented by other Anglo-American settlers as having leggings decorated with human finger bones. This unsubstantiated “fact” was contradicted by his promise not to take up arms against Americans or Mexicans; also by frequent documentation, found in correspondence of the period, of consistently excellent conduct exhibited by the Utes. At any rate, enemy finger bones and fingers were not unknown as decorations among Plains tribes. This did not necessarily imply wanton savagery, but rather a diversity in cultural perspectives.¹⁴

The Moughwach and Kapuuta leaders departed the 1854 meeting with Meriwether much disappointed in the proceedings. Before many days had passed, all the chiefs who had met with the governor and Agent Carson and received presents from them, became sick with smallpox and died, including Chico Velásquez. They also infected many of their people, leading to an epidemic that claimed numerous lives.¹⁵ It is unclear whether Carson purposefully infected the Ute leaders, but given his later activities against the Navajo and other Indigenous Peoples, it is not outside the realm of possibility.¹⁶ By the autumn of 1854, the dispersed remains of Ute smallpox fatalities could be found in abundance around the San Luis Valley. Some sources claim that Chico Velásquez was succeeded by Kaniache, but as he was already documented as being a prominent leader in his own right, this is doubtful. Instead, a new leader emerged who was not kindly disposed toward Anglo and Mexican squatters in Ute territory.

Tierra Blanca was a warrior from a younger generation that was not as willing to embrace peace and endure starvation and broken promises from the U.S. government. Throughout the waning months of 1854, there were reports from the Arkansas River Valley of stolen livestock, threats, and sporadic killings. Some of the deaths and disappearances could certainly be attributed to other factors, but the Utes were, no doubt, justifiably angry and prepared to engage in traditional raiding specific to obtaining needed resources and some measure of vengeance.¹⁷ The Kapuuta and Moughwach bands probably joined up with some of the more bellicose factions of the Jicarilla Apache.

Previously, in the summer of 1842, some of the employees with Bent, St. Vrain & Company

decided to build an independent trading post on the confluence of the Arkansas River and Fountain Creek. The location's low elevation was temperate, there was abundant water for crops, and the site was in close proximity to a well-known ford across the Arkansas. The post would be the closest American settlement to Taos and would, therefore, optimize trade with several Native groups, Mexican artisans and regional fur trappers. The founders probably included George Simpson, Francisco Conn, Mathew Kinkead, Joseph Doyle, Robert Fisher, and Alexander Barclay from Bent's Fort, and possibly Jim Beckwourth.

Known as El Pueblo, the post became a center of farming, ranching, and trade, and as it was in the vicinity of the Santa Fe Trail, it became a popular stopping place for wagon trains. Embryonic villages began to develop in the area, and trade with local Indian tribes ensured peaceable relations, especially with the Utes. After the Mexican-American War, Mexican settlements were expanded in the region. Additionally, Anglo-American migration, trade, and hunting reduced game, creating diminished goodwill between the Utes and settler inhabitants. Following the betrayals and broken promises subsequent to the Abiquiú Treaty and the calamitous outbreak of smallpox, cordial relations were entirely abandoned.

On Christmas Eve of 1854, Ute warriors began a campaign of destruction against all invaders in their ancestral territory. They first raided homesteads and villages along the river, stealing livestock and killing anyone not fortified in the traditionally defensible adobe structures. Next, Chief Tierra Blanca led approximately 50 warriors in an attack on El Pueblo. It was swift and brutal, and the Ute warriors killed every man in the post, somewhere between 12 and 20, and took a woman and two children as captives. The warriors also took possession of around 200 head of livestock. The attacks have often been portrayed variously as a definitive act of sly subterfuge, unjustified treachery in response to Christmas hospitality, or a case of drunken barbarity. Eyewitness accounts and the historical record clarify that the attacks were acts of desperation and retaliation in response to duplicity, starvation, and deceit. Depredations continued into 1855, leading to an exodus of settler families of Mexican and Anglo-American origin from the entire area of the Arkansas River. Many of them sought refuge at Fort Massachusetts and some of them journeyed back to the eastern states or down to Taos or Santa Fe. By the end of 1855, the region was abandoned by all intruders into Indian lands except for William Bent at Bent's Fort and Charles Autobees with, perhaps, Richens Lacy Wooten in their small settlement on the Huerfano River.¹⁸ Moughwach and Kapuuta warriors, probably allied with the Jicarilla Apache, also attacked settlements in San Luis Valley. In February of that year, Agent Carson reported to Governor Meriwether that the Ute and Jicarilla combatants had been "committing thefts, robberies and murders upon the stock and inhabitants of this northern portion of the Territory."¹⁹

It should also be noted that claims of depredations, murders, and losses tended to increase exponentially over time, and many could not be verified. Government attorneys ultimately dismissed all claims for restitution based on the fact that claimants were unlawfully in Indian

country. Additionally, under the Indian Trade and Intercourse Acts, tribes at war could not be held economically accountable. According to George Manypenny, commissioner of Indian Affairs, in a letter to the House Committee on Indian Affairs on January 30, 1855, “The first section of that act defines what is Indian country, and the 17th specifies the circumstances under which claims for Indian depredations shall be recognised and paid. They must have been committed within the ‘Indian country,’ upon the property of persons lawfully there, or in a State or Territory inhabited by citizens of the United States, by Indians from within the limits of the Indian country, and in all cases by Indians in amity with the United States.”²⁰

Brevet Brigadier General John Garland, commander of the Military District of New Mexico, pressured Governor Meriwether into calling for a militia battalion of mounted volunteers to join with the regular troops in pursuing and punishing the Indians. Six companies of volunteers were gathered and equipped at Fort Union on the eastern slopes of the Sangre de Cristo Mountains, and placed under the command of Lieutenant Colonel Ceran St. Vrain. Colonel Thomas Fauntleroy, a veteran of the Second Seminole War, was placed in charge of military operations, including soldiers from Fort Union, Fort Massachusetts, and Cantonment Burgwin near Taos. In March 1855, Fauntleroy gathered a force of over 500 men at Fort Massachusetts, including the volunteer militia and spies such as Charlie Autobeas and Agent Christopher Carson.²¹

Fauntleroy’s foremost mission was to punish Chief Tierra Blanca’s people for the attack on El Pueblo. After a brief skirmish with combined Jicarilla and Ute forces on Cochetopa Pass, during which the Indians scattered after a delaying action to allow their families to escape, the soldiers returned to Fort Massachusetts. Fauntleroy next led his troops back to the San Luis Valley while St. Vrain led his volunteers into the Sangre de Cristo Mountains to search for the Jicarilla. After detecting the trail of Chief Blanco’s band, Colonel Fauntleroy pursued them to a camp on the Arkansas River not far from Poncha Pass. He caught the camp by surprise, killing forty warriors and wounding many others on April 28. The soldiers captured children, horses, sheep, and goats, and took possession of all the Ute belongings, including over 200 buffalo robes, which were worth approximately \$13,620 by today’s monetary standards.²²

Tierra Blanca escaped with the remainder of his people and the military hunted them with a purpose. The soldiers proceeded to devastate the Ute refugees, destroying lodges, burning Ute possessions, taking horses and capturing over 50 women and children, who were probably placed in Anglo and Mexican households as slaves.²³ Some sources report that troops willfully disfigured Ute victims, and Ute women killed their own children rather than have them fall into the hands of Fauntleroy’s men. Even Governor Meriwether admitted that such campaigns “caused these Indians great loss and suffering.” Both St. Vrain’s and Fauntleroy’s commands were intent on punishing the perpetrators of the El Pueblo tragedy, but Agent Carson expressed disappointment that they had not been adequately chastised. By this time, some of the Kapuuta Ute band had gone to the San Juan River region to avoid the violence.

By August of 1855, the Moughwach peoples were exhausted and so destitute they were relegated to eating their mules. Governor Meriwether met with a Ute delegation of Moughwach and Kapuuta leaders and they signed another peace treaty with the U.S. government, wherein the Ute People agreed to cease all depredations and give up claim to any lands other than designated reservations. Again they were promised rations, farm implements, blankets, clothing, seed, and household goods. Both Anglo and Hispano New Mexicans, however, did not want the Indians located near their settlements, and petitioned President Pierce to reject the treaty. As a result, it was never ratified.²⁴ Regardless, the balance of the Moughwach, Kapuuta, Tabeguache, and Jicarilla bands made frequent visits to Taos and Abiquiú, drawing whatever scant rations that were made available.

Agent Carson was concerned that proximity to settlements might lead to renewed violence, especially due to the scarcity of game and exposure to alcohol. Taos was renowned for its production of “Touse” or Taos Lightning, an intoxicating beverage made from wheat. Kaniache, who remained a prominent leader among the Moughwach band, was documented by Carson to be maintaining peaceful dealings with American residents. But by 1858, as the Tabeguache were pushed out of their territory by the Pike’s Peak gold rush and Cheyenne and Kiowa war parties were reported to be invading Ute lands, Carson feared an end to continued tranquility and informed his superiors of “a growing spirit of insubordination strangely manifested” among the Moughwach and Kapuuta people.²⁵ During this time period, there was some trepidation that the Utes would join in the war between Mormons and the United States, but this was apparently unfounded. There was, however, an incident between Chief Tierra Blanca and the leader of a surveying party. It was suspected that the quarrel resulted from instigation on the part of the survey crew. Agent Carson managed to defuse the situation, but the Indians harbored resentment over the affair.

Meanwhile, gold had been discovered near the Platte River at the base of the Rocky Mountains. By 1859, prospectors and hungry miners were invading the Valle Salado, which later became known as South Park. This was the last and only hunting region left to the Moughwach, Tabeguache, and Kapuuta bands. Carson wrote to J.L. Collins, the superintendent of Indian Affairs for New Mexico Territory (including southern Colorado) to inform him that problems might arise when the Indians came upon prospectors in their territory. There were rumors of groups of armed miners hunting both the Moughwach and Tabeguache people. Unfortunately, Collins sustained an attitude that pioneer citizens, not the military, should take care of the “Indian problem.” In his report to the commissioner of Indian Affairs in 1859, he wrote, “How were the frontiers of Kentucky and Tennessee defended in the first settlement of those States?... an alarm of Indians aroused every citizen; they shouldered their rifles, and rallied to the rescue, leaving their noble wives and daughters to defend their homes and fire-sides.”²⁶ Clearly, the superintendent held no sympathy for the Indian Peoples in his charge.

Around this time, Carson noticed a decrease in the population of the Moughwach people.

Despite his unease about the Utes associating with the local populace of Taos, the Indians tended to collect whatever rations and items were made available to them and then departed to more remote areas until hunger forced them to return. Agent Carson ascribed the declining numbers of tribal members to warfare with other tribes and the growing prevalence of disease among the band. Poor nutrition would doubtless have made the Moughwach Peoples more susceptible to illness; increasing exposure to Anglo-American settler-colonists would have exacerbated the situation.

A new agency was established for the Tabeguache Utes on the Conejos River and a rancher named Lafayette Head was made the agent. The Kapuuta Utes continued to be served at Abiquiú and the Weeminuche were managed by Tierra Amarilla. By June of 1861, William F.N. Army replaced Carson as agent to the Moughwach and Jicarilla Apache. The Taos Agency was closed, apparently because of growing whiskey trade with the Indians, and moved 40 miles away to Maxwell's Ranch on the Cimarron River. It was also in February of that year that Colorado Territory was established. New Mexico Territory still extended north to the Arkansas River at that time. The Grand River, Yampa, and Uinta Utes, as yet unanswerable to any treaty, were assigned to the nascent Middle Park Agency in 1862, under the auspices of Simeon Whitely, a newspaperman from Wisconsin and a supporter of Abraham Lincoln. No agency structure existed and Whitely operated from Denver, having very little contact with the Utes, as he remained in the city most of the year.

2

Ouray, a chief of the Tabeguache Ute People, had spent a great deal of time in his youth around Taos. Born to the Tabeguache people through his mother and for the Jicarilla Apache through his father, he was later baptized as a Catholic and educated by priests, thereby becoming fluent in Spanish. Later, Ouray was able to converse in several Ute dialects and Apache languages as well as English. He was probably profoundly affected by the violent takeover of northern New Mexico by U.S. military forces and the aggressive retaliation for the Taos Revolt of 1847, the armed rebellion of Mexican and Pueblo allies against U.S. occupation. As a witness to these events, he must have been thoroughly convinced of the uncompromising tactics employed by the American government. Not long after the signing of the Abiquiú Treaty, Ouray abandoned all ties with Taos and joined the Tabeguache people. He began to earn a reputation among the Utes as a courageous warrior in struggles against incursions from Cheyenne and Arapaho into traditional hunting lands.

During the Ute and Jicarilla raiding of 1854 and 1855 in the Huerfano and San Luis valleys, the Tabeguache were conspicuously absent. By 1859, they were known for actively defending American interests against attacks by Plains tribes. In one documented incident, a wagon train, bound for the new gold fields on the confluence of the South Platte and Cherry Creek, was actively defended against a marauding war party by Ouray and a contingent of Tabeguache

Utes. Horace Greeley and Agent Carson both expressed admiration for Ute fighting abilities, especially within their mountain strongholds. Despite this, the voracious white miners and settler-colonists were zealously demanding that Ute lands be secured by the U.S. government for the mineral wealth buried within.

By 1862, John Evans, personal friend of President Abraham Lincoln, was appointed territorial governor. Evans soon became convinced that most of Colorado's richest mining districts were, indeed, to be found in country claimed by the Utes and confirmed by the Abiquiú Treaty. Recognizing that the Utes were militant, independent, and numerous, Evans sought to negotiate with the tribe in order to prevent what was certain to be a bloody and costly conflict should violence erupt between white settler-colonists and the Indians. Not surprisingly, the Colorado territorial delegate to Washington D.C. appeared to be more concerned about the safety of miners than that of the Ute People. Additionally the Homestead Act, encouraging the settlement of vast tracts of western land, had just been passed and this would assuredly lead to greater numbers of emigrants and increased potential for carnage.

European Americans were ignorant of the fact that the Ute nation consisted of several distinct bands and each band had its own leaders and councils. No single chief held absolute power or made decisions for the entire tribe. As of the early 1860s, the Utes were generally divided into seven bands: the Kapuuta, Weeminuche, Tabeguache, Grand River, Yampa, Uintah, and Moughwach. As with other tribes, the whites impatiently and consistently attempted to impose their own ideas of political structure on tribal organization, leading to ubiquitous confusion between Indians and government officials.

Lafayette Head, Indian agent on the Conejos River in San Luis Valley, was directed by Governor Evans to gather a delegation of 13 Ute men. Supposedly, Head purposefully included several individuals who possessed no particular influence or authority among the Ute People. He did, however, include his interpreter, Ouray, who had worked with him since 1856 and was a principal leader with the Tabeguache band, along with an influential war chief named Shavano. The agent escorted the Utes to Denver where they were joined by another Indian delegation made up of representatives from several Plains tribes. The two groups were then conducted to Washington, D.C.

Evans's plan was to impress the Indians with the military prowess of the government, thereby empowering Colorado Territory to negotiate strategic terms for the acquisition of regions rich in gold and silver ore. The Utes, nevertheless, refused to negotiate any treaty while in the U.S. capital. They reportedly expressed the desire to confer with members of their bands at home before relinquishing land and making concessions. One of the Utes was reported to have stated that, "You want our land because there is plenty of gold there, but all that you are willing to give us is copper. Do you think that we are fools?... We wish to go home and when we get there we may be willing to make a treaty."²⁷ The Utes departed Washington without having made any agreements with U.S. authorities.

In October of 1863, still anxious to conclude an agreement, Governor Evans headed a commission to negotiate a treaty with the Utes. The treaty council was held at Agent Head's ranch in San Luis Valley. Other members of the commission included the superintendent of Indian Affairs in New Mexico, Mr. Michael Steck, and John G. Nicolay, President Lincoln's private secretary who served as special agent and secretary to the commission. Five hundred Colorado soldiers were also present, under the command of Colonel John Chivington, who had led several companies of Union troops to victory against Confederate forces on Glorieta Pass near Santa Fe in the previous year. Chivington was also soon to be the author of an unwarranted and horrific massacre of Native Peoples in a camp on Sand Creek in Colorado Territory.

Mr. Nicolay estimated the number of Tabeguache representatives present at the proceedings to be around fifteen hundred. Only one Kapuuta chief and three Moughwach chiefs supposedly attended the negotiations and the Weeminuche designates were reported as having become disgruntled, subsequently abandoning the proceedings. All the other northern Utes declined to send delegates. Kaniache, still principal chief of a large southern band of Moughwach Utes, also refused to attend, resisting any agreement that would relinquish more Ute lands. In comparison with the cooperation of the Tabeguache, however, Kaniache's defiance led to lost influence among the whites, including with Agent Christopher Carson, who abandoned his previous cordial relationship with the Moughwach leader. Only Ouray and nine other Tabeguache leaders ultimately signed the treaty.

The Conejos Treaty granted the U.S. government rights to all land in the Rocky Mountains east of the Continental Divide as well as Middle Park in central Colorado Territory. This included the Ute sacred mountain called Tava, from which the Tabeguache people took their name, known by the whites as Pike's Peak. The San Luis Valley was also ceded, even though the Utes never agreed to this stipulation and never intended for this cession to be made. Even Agent Head corroborated the fact that the treaty had been altered without the Utes' consent. This spurious modification is also confirmed by the fact that the Conejos Agency continued to function for another 5 years while being situated in the region that had supposedly been ceded in the 1863 negotiations.

It is important to note that the Conejos Treaty stated that "the United States shall have the right to establish one or more military posts, with their needful reservations, upon the lands and hunting-grounds not ceded by the Tabeguache band in this treaty; also the right to locate, construct, and maintain railroads and other roads and highways through the same, and along routes of United States mail-lines, at suitable points, to establish and maintain stations. *Any citizen of the United States may mine, without interference or molestation, in any part of the country hereby reserved to said Indians where gold or other metals or minerals may be found.*"²⁸ (Author's emphasis.)

Article 4 stipulated that the Moughwach people would be settled on the same reservation as the Tabeguache, probably as a result of Kaniache's refusal to take part in the negotiations. Article 8 specified that, "For the period of ten years the said band shall receive, annually, by such distribution as the Secretary of the Interior may direct, ten thousand dollars' worth of goods, and also ten thousand dollars' worth of provisions."²⁹

Following the treaty, the United States government failed to supply the Utes with promised rations or goods and they continued to live in their accustomed lands, adhering to cultural traditions. The Utes maintained their customary practices of hunting and raiding, while settlers demanded protection from the government and military. The settler-colonists could not countenance the Utes' claim to their ancestral territory, and the Indians considered the miners and farmers to be trespassers. In the early 1860s, a Denver newspaper pronounced that whites suffered because "The tribes by which we are surrounded are our inferiors physically, morally, mentally." It demanded "extermination against the red devils."³⁰

In 1863, Kit Carson enlisted Ute warriors to assist in the rounding up of their old enemies, the Navajo. The balance of the Diné people were successfully captured and sent upon the Long Walk to the concentration camp at Fort Sumner. In 1864, Carson recruited Ute and Jicarilla scouts for a campaign against the Kiowa and Comanche in Texas. In this way, Indian nations were turned against each other, further dividing and conquering them and preventing any alliance of tribes that could confront the encroachment of invaders into their lands.

During the mid-1700s, a group of Spaniards from the Taos area discovered a rich vein of gold in the San Juan Mountains. They mined the ore and transported it to *Nuevo Mexico* for several years until the Utes attacked and killed almost all members of the expedition, putting an end to the venture. Rumors persisted, however, and in 1860 Charles Baker organized a group of men to reconnoiter the rugged mountain range. They later reported rich discoveries. A number of prospectors began to explore the mountains as a result of the news. At the same time, other events were taking place that further convinced the Colorado population that it would be expedient to be rid of the Utes on a permanent basis.

In the mid-1860s, Chief Kaniache's son was murdered by white colonizers. Kaniache subsequently began to attack settlements in southern Colorado and invited Ouray to join him. Instead, Ouray allegedly expedited the release of a woman captive and her children as well as warning other settlers of impending attacks and informing the military personnel at Fort Garland (including Kit Carson) of transpiring events. These acts elevated his status as a trustworthy ally to the whites and he was credited with having saved many lives. The Moughwach raids accelerated the settler-colonists' demands for the removal of all Ute Peoples from the vicinity of white communities.

The tragic and visible starvation of the Nuuchiu people, resulting from lack of game and unfulfilled treaty stipulations, apparently did nothing to arouse sympathy. Territorial Governor Alexander Cummings, Evans's replacement, met with Ute leaders in 1866 and reported that

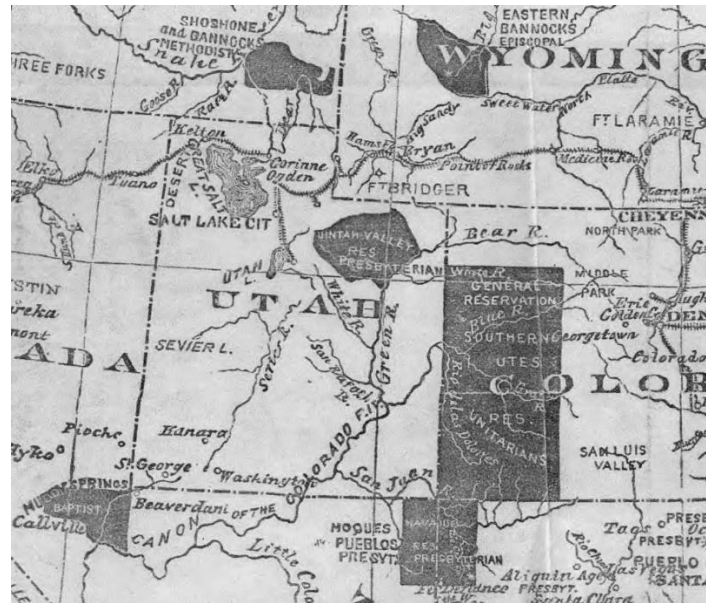
the Utes were in a “destitute Condition” and that the few annuity goods provided the year before had been “disgracefully worthless, rotten, and disgusting, and might reasonably have been made the grounds of revocation of the treaty.”³¹ Nevertheless, the white population’s wants and needs were paramount. Consequently, U.S. politicians initiated another proceeding through which to secure additional Ute lands.

Ouray, having proven to be cooperative as a negotiator in 1863 and an established friend to Anglo-Americans, was enlisted as the nominal leader of the Utes again in 1868. Having experienced the frustration of dealing with leaders of seven disparate Ute bands, government authorities insisted on establishing Ouray as the principal chief of all Utes in order to facilitate greater ease of negotiating supplementary land cessions. His ability to communicate and interpret also made him a desirable Ute representative from the perspective of the U.S. authorities. At the request of officials in Washington D.C., another delegation of Utes was escorted to the U.S. capital, with Ouray as overall spokesman.

Nine Ute leaders, aside from Ouray, were included in the assembly: Guerro (sometimes reported as Ouray’s father), Kaniache, Ankatosh, Pahvant, Piah, Nicaagat (Captain Jack), Suviap, Jose-Maria and Pabusat. Their escort comprised Agent Lafayette Head, another Indian agent named Daniel Oakes, new Colorado Territorial Governor Alexander Hunt, interpreter U.M. Curtis, and Kit Carson, now seriously ill. They departed Denver by stagecoach to Cheyenne in January of 1868. From there the Utes traveled by railroad to Washington, passing through several major cities. There they met with Nathaniel Green Taylor, commissioner of the Indian Bureau and member of the famous “Indian Peace Commission,” finally coming to an agreement in a hotel room on March 2, wherein they were forced to relinquish large tracts of their ancestral homelands. Some sources mention “questionable tactics” being used to obtain their consent.

The treaty of 1868, variously known as the Hunt Treaty or the Kit Carson Treaty, created a reservation for six of the Ute bands in Colorado Territory, while creating another reservation in Utah for the Uintah Peoples. Two agencies would be established in Colorado, one on the Los Pinos River for the Tabeguache people, and one on the White River farther to the north for the Yampa and Grand River Utes. The Moughwach and Kapuuta settled in the southern portion of the reservation near the Weeminuche. (Many of them shared relatives and the delineation of bands in such a strict sense was, of course, a concept resulting from Euro-American misapprehensions.) The Ute domain in Colorado territory would now be permanently west of the 107th meridian and south of the 40th parallel. All other lands would be forfeit.³² Many of the Ute People resented the loss of land and having their lifeways proscribed once again. Within a short period of time, upon his return from the east, there were at least five attempts on Ouray’s life carried out by disgruntled Ute warriors. The Utes had learned they would be expected to become farmers, raise sheep and milk cows, and send their children to school to study the white thinking. Agents would be charged with distributing food and supplies as

well as livestock and farming implements, and a blacksmith, miller, carpenter, and teachers would be provided. Instead of living as warriors and proud, self-determining people, the Utes were supposed to become as obedient children awaiting handouts from the U.S. government. Needless to say, the Nuuchiu had learned that American promises would not be kept. They especially were skeptical of the promise that the territory encompassed by this new reservation would always be protected from further cessions of land unless agreed upon by three-fourths of the adult males of the entire Ute nation.



3

It soon became obvious that prospectors and miners were sneaking into the San Juan Mountains, a region specifically protected from white encroachment by the 1868 Treaty, at an alarming pace. Reservation boundaries were constantly being disregarded and government surveyors tended to be creative. A year after the treaty had been signed, no agency had yet been established and no goods or supplies had been provided. Game was becoming scarce and, without access to the Great Plains and buffalo, the Utes were again experiencing severe famine. The new territorial governor, Edward McCook, expected gratitude from the Ute People instead of the mistrust he encountered.

He was displeased with the progress being made at Los Pinos and believed the Indians were not working hard enough. The altitude of the location made farming almost impossible and crops failed every year. Despite Ute misgivings, Lieutenant Speer, the first agent assigned to Los Pinos, had been allowed to finally construct agency buildings on the site. Most of the promised annuities had still not arrived, however. Otto Mears, a Colorado entrepreneur, government contractor, and aggressive capitalist, built the nearly impassable road from the

closest community of Saguache to the agency. Even McCook thought the road to be “the worst possible.” It took eleven full days to freight goods over the seventy-five miles from Saguache to Los Pinos.

Upon making a tour of the reservation, Governor McCook was aggrieved that such an extent of valuable lands had been provided for in the treaty, documenting that he was shocked that the Utes were allowed to retain “the richest portion of the Territory of Colorado.” He also expressed dissatisfaction with the “system of paying a yearly and constantly-increasing tribute to a number of petty, savage sovereignties.”³³ McCook actually petitioned the commissioner of Indian Affairs to allow several white men to enter the San Juan district within the reservation. His argument was that “one-third of the territory of Colorado is turned over to the Utes who will not work and will not let others work.”³⁴ Despite being refused, a party of Colorado prospectors (probably sanctioned by McCook) trespassed into the mountains in 1870 and discovered several rich mineral deposits on the Animas River. Their findings vastly increased the number of miners pouring into the San Juan Mountains in direct violation of the treaty. One miner, Adnah French, insisted he had the consent of military and civil authorities to “explore and mine the region.” Significantly, the mountain range possessed great cultural value for the Nuuchiu Peoples.

By the following summer, miners were crawling all over the San Juans and a stamp mill had even been freighted into Baker’s Park. Scores of individuals filed claims on Indian land, as documented “...in accordance with laws of Congress and in conformity to the Local Laws of the Territory of Colorado.” Whenever confronted by authorities, the miners insisted that the Utes liked having them there and that they were always made welcome by them. Meanwhile, Lieutenant Speer had been replaced by Jabez Neversink Trask, a ridiculous gentleman who had been assigned as agent merely on the basis of being a Unitarian. In 1869, President Grant had initiated a new Indian “peace policy.” In an effort to diminish military control over agencies and limit corruption, he assigned various tribes to the tender mercies of missionaries from specific denominations. The Utes were consigned exclusively to the Unitarians.

Trask was unequipped to deal with Ute concerns about trespassers and the encroachment of mining communities within reservation boundaries. A true eccentric, even his odd manner of attire confounded the Utes. The Indians swiftly became frustrated with the agent, especially with his insistence they not work on Sundays and his refusal to issue food. When a special investigator, Gustavus Jocknick, was sent from the commissioner of Indian Affairs, he discovered that Trask had \$25,000 of Ute appropriations money locked up in a Denver bank. Jabez Trask was removed from the appointment and “General” Charles Adams, a man familiar with the Ute People, was installed as his replacement.

In 1872, the white citizens of Colorado (and their political allies) convinced the U.S. Congress that their ambitions regarding the riches of the San Juan region should be taken seriously. In late August, three representatives were chosen to negotiate with the Utes for a

cession of land within the southern portion of the Ute reservation. Two were members of the Board of Indian Commissioners: John D. Lang from Maine and John MacDonald of Missouri. The third was Territorial Governor Edward McCook. Adams, the agent, was in attendance and they were joined by Felix Brunot, chairman of the Board of Indian Commissioners, Thomas Cree, secretary to the Board of Indian Commissioners, two army officers, Major Price of the 8th Cavalry and General Alexander, commander at Fort Garland, former Indian agent Lafayette Head, former agent to the Utes in New Mexico Territory, William Arny, J.B. Thompson of Denver (brother-in-law of Governor McCook) and one Ferdinand Meyer, a merchant from Costilla and sutler to Fort Garland. A correspondent from the *Rocky Mountain News* was also in attendance. (The newspaper was founded and owned by William N. Byers, a vocal and notorious racist toward Native Peoples.) A man named U.M. Curtis was chosen as interpreter. John Lawrence from Saguache, who could speak both Spanish and the Ute language and was a known friend to the Ute People, was also selected as interpreter. In 1869, John Lawrence had accused Curtis of selling potatoes, part of the Utes' rations, to Otto Mears.

Otto Mears, the road builder and government contractor, also attended at least part of the negotiations. Later known as the "Pathfinder of the San Juans," he was adept at securing almost all the government contracts pertaining to the Ute People. Lieutenant Speer had even reported that Mears provided newly branded cow hides from previously dead bovines as proof that 50 head of cattle destined for Los Pinos had died en route, while keeping the live animals for his own benefit. Speers also documented in a letter to Governor McCook that Mears was involved with a group of men in Saguache who were willing to engage in any type of spurious dealings. Supposedly, Otto Mears freely voiced the opinion that the U.S.I.D. brand of the Indian. Department stood for "you steal, I divide."

The commissioners actually conceded during the proceedings that trespassers were, in fact, violating the existing treaty. They also insisted there was nothing that could be done to thwart the miners' activities and it would be to the Utes' advantage to give up the mining districts so that they could avoid conflicts and avert possible bloodshed. Ouray, as head spokesman for the Indians, was reported as saying that they did not intend to sell any more land, but were meeting with the commissioners to request that the U.S. government honor the conditions of the 1868 treaty. He demanded that authorities remove the intruders from their reservation and keep their word to the Ute People. The talks lasted four days. Finally, Governor McCook became frustrated and made an improvident remark that the Utes did not work hard enough to deserve all the land they possessed. Ouray became angry, refused to cooperate further and ended the council. Ferdinand Meyer later recounted that some of the whites who were present that day became fearful for their safety. Ultimately, the Utes refused to agree to additional land cessions, although they agreed to refrain from perpetrating violence upon white trespassers until spring.

Felix Brunot stayed behind to speak to the Ute leaders, especially Ouray. In the process of fulfilling his purpose of determining possible points upon which to barter, Brunot discovered that Ouray had lost his only son approximately ten years earlier. The boy had been captured by Lakota raiders somewhere near the Republican River and had been later traded to the Arapaho. The Ute chief desperately wanted his son returned to him and Brunot considered this to be a favorable bargaining tool. He promised Ouray he would do everything in his power to recover the young man and the Indian's response gave Brunot cause to believe supplementary negotiations might bear fruit, given the proper motivation. Ouray apparently believed that the might of the U.S. government could finally bring his son back to him and Brunot was content to exploit this belief without even knowing whether the boy was alive or dead.

Meanwhile, miners were extracting massive amounts of treasure from the Utes' mountains without any interference from the Indians who were attempting to remain peaceful in the interest of protecting their rights. Silver was assayed at six thousand to eight thousand dollars a ton and veins of gold ore were notoriously untainted with impurities, valuable and abundant. A single nugget taken from a large working lode on Ute lands weighed out at five hundred dollars. Samples of ore were sent across the country and mining companies were organized as far away as Chicago and New York. In response to the failure of the 1872 negotiations and to the Ute Peoples' legitimate complaints, however, the government was compelled to enforce the 1868 Treaty stipulations. Secretary of the Interior Columbus Delano alerted Secretary of War William Belknap that the situation was volatile and the U.S. Army needed to respond. Explicit orders were disseminated that all miners and prospectors had until June 1 of 1873 to disband and depart the San Juan Mountains. These orders were printed in the *Denver Tribune* and various other Colorado newspapers.

Severe snows and extreme altitude limited activity in the San Juan mining districts during the winter months. Most of the miners retreated either to various Colorado towns or congregated in Loma (originally known as La Loma de San José) and Del Norte along the Rio Grande on the southern boundary of the San Juan range. Del Norte had been incorporated in 1872 and the two neighboring towns served as key supply hubs for mining and prospecting. (Saguache, and especially a store owned by Otto Mears, also equipped white men bound for the mineral riches of the Ute lands.). Major Andrew Alexander, commander at Fort Garland situated in San Luis Valley, received orders to prevent continuing encroachment onto the reservation. He traveled to Loma personally and later reported over 300 men located there, awaiting the melting of deep snows. The officer selected a site a few miles north of the settlements and began to move troops in to set up a perimeter and secure the entrance into the San Juan region.

The overall civilian response to the military's proclamations and evident objectives was vehement and aggressive. Colorado citizens went so far as to threaten to fight the soldiers if they were not allowed back into the mountains. The *Denver Tribune* expressed its outrage, stating "that seven hundred American pioneers should be prodded out of the country by American

bayonets in order that a small band of dirty nomads can idly roam over 20,000,000 acres of hunting grounds is an atrocity.” General Pope, commander of the Department of the Missouri, the military department encompassing Colorado Territory, realized the futility of keeping hundreds of armed men from entering the Ute reservation without conflict. Pope was loath to order his troops to enforce the decree. He relayed his concerns to Washington. General Phil Sheridan had Pope recall the soldiers from the southern borders of the San Juan region and issued a warning that there should be no violence toward the miners. Additionally, an expedition of several surveyors and a geologist, under the auspices of the Army Corps of Engineers, was sent into the Ute reservation in order to prepare a detailed report and map of the mountains. This is clear evidence that the U.S. government fully intended to gain possession of the San Juan region however it could be achieved. The financial panic and bank failures of 1873 no doubt predisposed U.S. authorities toward resolutely acquiring the mineral rich mountains.

As the summer of 1873 progressed it became apparent the military would not intervene on behalf of the Ute People, more and more white men swarmed into the mountains. Most of the Utes were now fully committed to using force to protect their lands, but Ouray counseled restraint. The topic of his son was actively pursued by several parties at the request of Brunot and the recovery of the boy became a matter of recognized national importance. U.S. authorities were led to believe that if Ouray’s child could be found, this would make the successful negotiation for the San Juan mining districts almost guaranteed. In June of 1873, Brunot met with Agent Charles Adams and Ouray in Cheyenne, Wyoming Territory. The commissioner gave Ouray reason to believe that his son had been found among the Arapaho. In return, the chief made assurances that if his son was returned, he would do his best to urge a land cession of the San Juans with his people. He also agreed to gather the Utes for a council, but refused to allow any citizens or officials from Colorado Territory to attend, making it patently clear he did not trust any of them.

The new commission convened on September 6 at Los Pinos Agency and lasted six days. The Utes were in an ugly mood, given they had been awaiting the commencement of the talks for almost three weeks and that they had been forced to endure inexhaustible trespass onto their reservation all summer. When Felix Brunot arrived without Ouray’s son, the chief’s disappointment was manifest and Brunot had to make some convincing promises (to continue the search) in order for the negotiations to proceed. The government representatives consisted of Felix Brunot, Thomas Cree, Brunot’s secretary, Dr. James Phillips, a Spanish language interpreter from Washington, D.C., and John Lawrence as Ute language interpreter. They were accompanied by Los Pinos Agent Charles Adams and Agent Thomas Dolan from New Mexico Territory. Three other civilians from New Mexico were also present, as was the ubiquitous Otto Mears from Saguache, who attended later in the proceedings. An individual with a vested interest in the San Juan mining districts and concomitant profits, Mears should have been excluded from the council as per Ouray’s request, but the Russian immigrant possessed an

enterprising talent for insinuating himself into official negotiations whenever the Utes were involved. James Fullerton, a rancher in Saguache, was also invited at the request of Ouray.

It was estimated by Thomas Cree that approximately 1,000 Utes attended the council and all of the Ute bands were represented. In the course of the discussions, Shavano, war chief and vociferous opponent to white interests, confronted Brunot concerning government surveys that had tended to reduce the reservation lands and skirt the growing number of mining communities at whim. Apparently, boundary lines had been rather ambulatory and sympathetic to the trespassers. Supposedly Ouray had said, "They are measuring, and whenever they find a mine, they take a little piece more of our country."³⁵ All of the Ute leaders agreed that immoveable boundaries were necessary to avoid conflict and Brunot concurred. Shavano was persistent in his arguments and evidently exhibited profound mistrust of the government. The Utes also made it clear that they were only willing to cede the existing mining communities and mines and not the remainder of the San Juan region. According to Brunot himself, the commissioner refused to enter into such negotiations and explained to the Utes that if they only sold the existing mines, then other miners would rush in and they would have further troubles with intruders. The chiefs found this to be a difficult point to accept. The Utes remained adamant that they would not cede agricultural lands, but only mountainous areas that were likely to contain precious metals. In a letter to Colorado Territorial Governor S.H. Elbert, Brunot wrote, "The desire of the Utes to retain the agricultural portion of their country seems reasonable."³⁶ (Governor McCook had been removed by presidential decree and replaced with Elbert.) In a letter written at Los Pinos on September 13, Ouray made the following statement:

We do not want to sell our valley and farming-land for another reason. We know if we should the whites would go on it right off, build their cabin, drive in their stock, which would of course stray on our lands, and then the whites themselves would crowd upon us till there would be trouble. We have many friends among the people of this Territory, and want to live at peace and on good terms with them, and we feel it would be better for all parties for a mountain-range to be between us. We are perfectly willing to sell our mountainland, and hope the miners will find heaps of gold and silver; and we have no wish to molest them or make them any trouble. We do not want they should go down into our valleys, however, and kill or scare away our game.³⁷

The Utes finally agreed to sell the San Juan region and establish new boundaries for the reservation while retaining hunting rights on the ceded land, as long as friendly relations were maintained with the whites. The cession removed a total of approximately four million acres of land from the reservation. According to Brunot in his official report, "A contract has been made for the cession to the United States of all the mountain-country supposed to contain

metals, embraced in an area of over 60 by 100 miles. The Uncompagre Park, the Gunnison and San Miguel Rivers, and the agricultural and grazing lands on the south end of the present reservation are reserved to the Indians.”³⁸ In return, the Utes were to receive \$25,000 per annum in perpetuity. One questionable source (Sidney Jocknick, in a book dedicated to Otto Mears) suggests that Mears was the person who finally arranged for the Utes to sign the agreement, but this is not corroborated anywhere else. Even though Brunot stated that “No presents were given to influence them, and no promises were made other than those mentioned in this report and such as are named in the agreement,”³⁹ Article 6 of the new agreement provided for a one thousand dollar annual salary for Ouray that extended for a period of ten years or as long as he remained at peace and “head chief of the Utes.”

Obviously concerned about future relations between the Utes and the white Colorado citizenry, Brunot also included the following in his letter to Governor Elbert of September 18, 1873: “...the friendly feelings expressed by Ouray toward the miners and the people of Colorado, I have reason to believe, are shared not only by all the Utes who were present at the council, but by the whole tribe. I sincerely hope this friendly feeling will be reciprocated by the whites, and that the sensational reports of ‘threatened outbreaks of the Utes’ will cease, or will be treated by the authorities, and all good citizens, with the contempt and discredit they deserve.”⁴⁰ On November 20, 1873, the *Rocky Mountain News* published an extract from a letter written by a Colorado resident extolling the fact that the San Juan range now belonged to “Colorado and not to the lousy Utes.”

On October 9, 1873, a Ute delegation departed Denver for Washington in order to finalize the agreement. They were accompanied by Charles Adams and Otto Mears. On November 1, the *Rocky Mountain News* reported the Indian Bureau had recently apprised the Utes that the \$25,000 annuity would not go directly to them, but “was to go into the hands of government agents and be dispersed according to the discretion of such agents.” When a chief inquired about using the money to buy horses, the Utes were supposedly informed that the “Great Father” thought they needed a school house more than horses. As of 1871, after the Indian Appropriations Act was passed, the U.S. government no longer negotiated with American Indian tribes as sovereign nations, rendering them virtual wards of federal authorities. Therefore, the compact that provided for the cession of the San Juan Mountains was called the Brunot Agreement and was not formally referred to as a treaty. The agreement was ratified by the U.S. Senate on April 29, 1874 and, for the Ute People, remains a bitter memory, when a vital expanse of their traditional lands was deviously stolen.

While in Washington, a small delegation of Arapaho was presented to the Utes, including a young man who was supposedly Ouray’s son. The Arapaho refused to concede that the boy was the same individual who had been captured near the Republican River. It seems the person brought to Washington was not Ouray’s son. Ouray supposedly stated that, “the whites have tried to have me get this boy. But he is not my boy.”⁴¹ When the chief departed the U.S. capi-

tal, it was without the son promised by Brunot months before. According to an account by the commissioner, years later in 1901, the young man was indeed Ouray's child. Supposedly, the boy decided a year after their first meeting in Washington that he would go with Ouray after all, but when he attempted the journey to join his father in Colorado, the boy died en route. Interestingly, this fact was never documented in any other source.

On January 6, 1874, Territorial Governor Elbert made this statement to the legislative assembly of Colorado: "new mining districts have been discovered, and occupied, of such extent and richness, that of themselves they would place our Territory in no secondary position as a gold and silver region." He went on to say that the new communities in the mining districts were "soon to grow into prosperous and populous gold and silver producing centers, augmenting the bullion product of the country annually and indefinitely." Around the same period, Otto Mears organized the Saguache and San Juan Toll Road Company and proceeded to build a road across Cochetopa Pass to the newly established mining country. His foreman, Enos Hotchkiss, discovered an area rich in gold and silver, leading to the formation of a new community named Lake City. Mears eventually extended his network of profitable toll roads to include most of the settlements within the San Juan Mountains.

More disturbingly, according to a Colorado newspaper printed in November of 1873, "From a reliable source, we learn that Mr. Adams, Indian agent, who has just returned from Washington, has made a sale of two-thirds of the Little Annie gold mine in the San Juan country" for half a million dollars. Evidently, while in the nation's capital with the Ute delegation, Ute Agent Charles Adams had sold mining interests that were the product of trespass upon Ute lands. The man most responsible for protecting the Ute Peoples' rights and interests had played them false.

4

REMOVAL

As permanent communities were established within the remote San Juan mining districts, food supplies—especially ready sources of meat—were required to support the growing populace of white settler-colonists. This inevitably led to the extensive hunting of game and grazing of livestock on the slopes and in the valleys of the San Juan Mountains. Believing they had only ceded land where mines were located and discovering that vital game animals were either being slaughtered or driven out by widespread herds of sheep and cattle, the Utes were baffled by the sustained encroachment into what they considered to be their remaining hunting rights and reservation lands. Timber was essential for buildings and constructing mine shafts, so the countryside became scarred by wagon roads and denuded from pervasive logging. As more and more invaders entered the mountains, fences and houses began to appear in the fertile valleys to the west, in blatant defiance of the Brunot Agreement. Many of the Utes became angry with

Ouray and blamed him for the relentless trespass upon Ute lands. Some even suspected the chief of having conspired with the U.S. government against his own people.

To compound the Utes' consternation and sense of betrayal, the Unitarian Church removed "General" Charles Adams as the agent at Los Pinos in 1874, having discovered that the big German immigrant was, in point of fact, Catholic. Unlike Trask, Adams was considered trustworthy by the Utes, in spite of their recent disappointments and unrest. (It is doubtful they knew about his duplicitous mining investments.) Understandably, the Ute People were perplexed by this maneuver and had greater cause to mistrust the whites who supposedly were responsible for protecting their prerogatives and welfare and for enforcing government policy. Adams was replaced by a Unitarian minister named Henry Bond. According to the American Unitarian Association's 1877 Yearbook, the church-appointed agents were supposed to maintain a "strictly honest administration of government affairs" and "to meet the Indians in a humane, Christian spirit, saving them from trickery, robbery, intemperance, and other vices of frontier life; and to present to them the better phases of a Christian civilization." Not long after his appointment, the Utes, and especially Ouray, suspected Bond of redirecting cattle that were intended for Los Pinos and of other dishonest activities. The agent was also frail in health and ill-suited for rigorous duties.

Through an earlier error in determining the site, the Los Pinos Agency was not actually situated on the Ute Reservation, but was in reality a short distance to the east of the boundary. Relocation of the agency had been considered on occasion, especially as the Utes tended to remain at the location only three or four months out of the year. The cause for this was largely high altitude temperatures, poor agricultural potential, and because Cochetopa Pass had become a popular route for invaders into Ute territory. Relocation, however, had been postponed as a result of logistics and expense. Before his removal, Agent Adams had estimated that the move would cost approximately \$19,000. As time passed, however, moving the agency location came to be seen as expedient, especially since the southern bands seldom reported to Los Pinos and continued to maintain connections with the Abiquiú, Tierra Amarilla, and Cimarron agencies, despite a provision in the 1863 treaty that the Moughwach people were to be settled in the same area as the Tabeguache. After the Brunot Agreement, all southern Ute bands were expected to answer to the Los Pinos Agency since the greatest portion of the San Juan Cession had predominantly come from their territory. The southern Utes felt they had been tricked into signing the compact and eventually refused to come into the Los Pinos Agency at all, not even for rations. Ouray and a council of chiefs even attempted to provide the first year's appropriations from the Brunot Agreement to the Moughwach, Weeminuche, and Kapuuta bands, but they soundly repulsed the proposition, accusing the Tabeguache of having manipulated them into agreeing to the land cession.

In 1875, orders came from Washington to move the agency in response to increased white settlement and the threat of impending conflict. Despite their suspicions of Agent Bond, the

Tabeguache Utes finally agreed to relocate the Los Pinos Agency to a site in a valley along the Uncompahgre River. The lower elevation would allow for successful agriculture and milder winters. It took months to move 12,000 head of cattle, the sawmill and all the Ute belongings the seventy-five miles to the new location. The second Los Pinos Agency was finally established and populated by November of 1875. Ouray and Otto Mears promptly began construction of a spacious adobe home for the chief and his wife, Chipeta. When other Utes requested similar houses, they were told they would have to wait for materials and available workmen.

The greater part of the Tabeguache Utes (now known as the Uncompahgre Utes) settled into their new agency, but in 1876, Agent Bond reported that very few were raising crops. Instead, the people were successfully herding sheep and goats and refusing to learn manual labor skills, such as carpentry. The Utes were becoming increasingly concerned that the U.S. government constantly delayed payment of annuities and by 1877, was approximately \$90,000 behind in their obligations. According to Bond, the Utes were also displeased by white invaders building and settling in Uncompahgre Park, partly the result of an error made by a government surveyor named Miller, who had inwardly contracted reservation boundaries. This led to disputes over the park, an area expressly specified in the Brunot Agreement as a protected portion of the reservation. In 1876, President Grant had issued a special order restoring sixteen square miles of the Uncompahgre Park to the Utes, but the military was not allowed to enforce the order and settler-colonists continued to build ranches and farms in the fertile region. The agent also reported the frequent trespass of men on their way to new mining districts. Bond had this to say about the Ute People: "They make complaints, but no trouble. Indeed, with all the aggravations they are called upon to bear, one must be astonished at their heathen forbearance, equal to anything called Christian; or, on the other hand, at a sagacity that sees that all resistance would be futile."⁴²

Reverend Edward H. Danforth, the Unitarian agent at White River, related that the Yampa people and other northern bands (now known as the White River Utes) were predominantly hunting and trading to sustain themselves. By 1877, Danforth reported,

The annuities and supplies furnished these Indians amount to not over one-half that required for their support. None of their annuity goods (and but part of their supplies) have reached this agency during the year. Goods purchased in August of last year have been lying in the railroad depot, one hundred and seventy-five miles away, since November last, a period of over nine months. Flour purchased the first of June is still at Rawlins. No clothing, blanket, tent, implement, or utensils of any kind has been issued at this agency for nearly two years; no flour, except once—fifteen pounds to a family, since last May. In addition to the usual proportion of their subsistence, which the Indians provide for themselves, they have had this great deficiency to make up, in whole or in part, some way.⁴³

Also in 1877, a new agency was established for Moughwach, Kapuuta, and Weeminuche bands on Rio Los Pinos, far to the south of the original Los Pinos Agency; in 1878, U.S. Congress passed legislation closing the Ute agencies in northern New Mexico. Almost immediately, problems arose resulting from whites trespassing on Southern Ute reservation lands and driving large cattle herds across their minimal pastures, chasing off game animals and devouring the scant vegetation. An army post, named Fort Lewis (after Lieutenant Colonel William Henry Lewis, killed in September of 1878 in a conflict with the Northern Cheyenne), was swiftly built and garrisoned near Pagosa Springs, theoretically to prevent white/Indian conflicts, but most probably to create a military presence as a force for intimidation directed toward the Utes.

During the period following the Brunot Agreement, on August 1, 1876, Colorado had become a state. Her citizens remained strident in their resentment of the Utes possessing valuable agricultural lands for which the whites lusted. As a result, a proposal was made to the southern Ute bands to merge with the northern bands at White River. They categorically refused. Subsequently, more plans were made to combine all the Ute People on one greatly reduced reservation near White River as witnessed by the following statement made by Indian Commissioner Ezra Hayt:

It is estimated to contain an area of about 728,320 acres, and in physical features and convenience of access is believed to be well adapted to the purpose for which it is designed. It has a healthful climate, abounds in game and fish, and embraces a number of valleys of considerable extent and great fertility. Its area is sufficient to provide homes for all the bands of Ute Indians of Colorado and Utah, should subsequent negotiations succeed in accomplishing the much-desired result of uniting them upon one diminished reservation. From the most reliable data at the command of this office, it is believed that the members of all said bands do not exceed four thousand persons, and the reservation so provided is therefore evidently ample for their wants.⁴⁴

In agreement, Secretary of the Interior Carl Schurz, confirmed, "That the President of the United States be, and he is hereby, authorized and empowered to enter into negotiations with the Ute Indians in the State of Colorado for the consolidation of all the bands into one agency, to be located on the White River, or near said river, and for the extinguishment of their right to the southern portion of their reservation in said State."⁴⁵

As time went on, and at the insistence of settler-colonists and their collusive politicians, more bills were presented to the U.S. Congress intended to consolidate all Utes at White River or completely banish them from the state of Colorado. Ultimately, there were no actual agreements negotiated or ratified. In 1879, fate and a recalcitrant non-Unitarian Indian agent,

appointed by a powerful political and capitalist collective, were about to decide the eventual destiny of all remaining Ute bands in the “centennial state.” As Agent Danforth had predicted in 1877, “I am satisfied that some of the complaints (of the Colorado citizens—*Author’s notation*) originate in the desire of certain parties to create a sentiment unfavorable to the Indian, and precipitate a trouble which may be made the occasion of depriving the Indians of some of their rights.”⁴⁶



5

Nathan Cook Meeker was born in Ohio and was a scholar of Charles Fourier, a utopian agriculturalist, as well as of the American Transcendentalists, corresponding for a time with Ralph Waldo Emerson. Although he generally found Christian churches to be unsatisfactory, he occasionally flirted with religion and eventually married a woman a few years older than himself who adhered to firm Christian beliefs. He toured as a lecturer, speaking about utopian ideals and temperance and, for a time, became a vegetarian. Meeker and his wife, Arvilla, founded a utopian commune in Ohio, which failed miserably, and he subsequently became the Civil War correspondent for the New York Tribune under Horace Greeley. After the war, Greeley kept him on as the agricultural editor.

In 1870, Meeker, still unsettled in any type of lucrative occupation (and with Greeley's encouragement), established the Union Colony on land purchased from the Denver Pacific Railroad near the confluence of the South Platte and Cache la Poudre rivers. This land was stolen, of course, from traditional territory of the Arapaho and Cheyenne Peoples by way of the Pacific Railway Act of 1862 and Medicine Lodge Treaties of 1867. In March of 1869, the U.S. Congress had approved a transfer of lands, formerly granted to the Union Pacific Railroad, to the Denver Pacific Railway and Telegraph Company. This organization's foremost investors and advocates were William Byers and John Evans.

The principal community of Meeker's new agrarian colony was named Greeley, after Meeker's primary financial backer and mentor. The railroad line was completed to Denver early in the settlement's existence, and should have helped the colony thrive, but the land was arid, irrigation projects were inadequate, and financial problems abounded. Meeker began his own newspaper, however, and was prolific in expounding his opinions in print. Unfortunately for Meeker, when Horace Greeley died in 1872 he was unable to pay back over \$1,000 to the estate, and Greeley's daughters sued him for the money owed. He began reaching out to powerful Colorado politicians and capitalists, seeking gainful employment with the government that would allow him to acquire greater financial stability and pay off his debts. Through his ties to Evans, Byers, Frederick Pitkin, Henry Teller, and other prominent men in Colorado, Meeker supposedly leveraged whatever influence he had and, with their assistance, wheedled a position with the Indian Bureau.

Vainglorious audacity was one basic characteristic that seems to have been manifest in Nathan Meeker throughout his abundant writing and embedded in his fundamental behavior. This, no doubt, presented itself as an auspicious opportunity to place a notorious troublemaker and self-righteous complainer in a pivotal role with the Utes, guaranteed to create conflict and, with a bit of luck, provide justification for ridding Colorado of its remaining Indigenous population. Governor Frederick Pitkin had an explicit stake in the removal of the Utes from Colorado because of his connections with mining interests as well as railroad investors, such as Otto Mears and Jay Gould, who desired to construct a railway line from California to Denver, the proposed route of which cut straight through the existing Ute reservation. Senator Henry Teller, also with strong ties to mining concerns, joined Pitkin, the Women's National Temperance Union and several other Colorado politicians and businessmen in recommending Meeker for the job. It seems apparent that, given Meeker had absolutely no experience with Native Peoples and was renowned for his uncompromising fanaticism, he was destined to spread discontent and disruption among the Utes. In January of 1878, still in debt, Meeker was given the post of agent at White River, despite the fact he was not a Unitarian. He did not, however, arrive at the agency until May of that year.

Reverend E.H. Danforth, the last Unitarian agent assigned to the White River Agency, had resigned in frustration at the government's failure to provide promised annuity goods. There

had been difficulties with transporting rations, blankets and other supplies from Rawlins to the agency and, on at least one occasion, food had rotted while sitting in the railroad depot owing to unpaid freighting charges. Danforth had come to the attention of Governor Pitkin through protests from settler-colonists and miners regarding the fact that the Utes continued to hunt and fish and roam throughout their designated reservation lands, living according to traditional culture. They also remained forced to sustain themselves, as Danforth had reported in 1877, due to missing rations and goods, while whites persisted in their resentment that the Utes retained possession of extensive and valuable agricultural lands, potential mineral wealth, and hunting rights. In response to the complaints of his constituents, Pitkin had placed additional pressure on Danforth to depart, knowing the agent was a vocal advocate for the Utes and was acutely aware of the challenges the Indians were compelled to endure at the hands of the U.S. government and Colorado citizenry.

The other abiding issue for any White River agent was the insistence of the Indian Bureau that the Utes settle down to learn farming, adopt Euro-American lifestyles and dwellings, learn to read and write English, and even wear white people's clothing. The Utes were determined that they would not become the products of this policy, continuing, for the most part, to resist any external coercion to plow the land and raise crops. Ouray was, of course, the exception and proved himself to be a capable hand at agriculture and animal husbandry on the Uncompahgre Agency, but the principal chiefs of the White River bands held to time-honored beliefs and would not force their people to assume foreign customs. Nathan Meeker saw his appointment to the White River Agency as the ideal opportunity to prove that his philosophy of agrarian utopia was a viable approach to "civilizing" Indian Peoples. According to the Annual Report of the Commissioner of Indian Affairs for 1879, "Agent Meeker found the White River Utes to be a thoroughly wild and barbarous people, upon whom civilization had had scarcely any perceptible effect."

Determined to impress upon the Utes the importance of complying with his directives and respecting his authority, Meeker began to withhold rations from those who would not work according to his instructions. Ute People who farmed or performed other chores on the agency received double rations and fifteen dollars a month. In addition, soon after his appointment, Meeker made the decision that the original site of the agency was undesirable and proceeded to build a new one some fifteen miles south. New buildings were constructed and an irrigation system was excavated by Ute laborers. One of the principal chiefs, Captain Jack (Nicaagat), refused to move and remained at the old location with his people. Jack spoke fluent English, having been sold to a Mormon family as a child. Nicaagat soon became a significant obstacle to Meeker's attempts to control and manipulate the Utes and sought his removal as agent, even attempting twice to enlist Ouray's aid to this end. Ouray asked that the agent at Los Pinos relay these requests to Indian Commissioner Hayt and inform him of potential difficulties, but no report was ever documented as having been forwarded to Hayt.

Nathan Meeker compounded the situation at White River by placing his wife Arvilla in a position as religious instructor and his daughter as schoolmistress. Furthermore, most of the white agency workers had followed him from the Union Colony and were his ardent disciples. Disturbingly, his nickname of “Father Meeker” also accompanied him to the agency. Eventually, the Ute People mostly referred to him as “Nick,” either derived from his initials of N.C., or as a sarcastic allusion to the devil. Josephine, Meeker’s daughter, was known to have gambled and smoked with some of the men, thus certainly not presenting a convincing example of Meeker piety. Probably unaware of his daughter’s misbehavior, the agent continued to browbeat the Utes with his sanctimonious ideals. That he had virtually no regard or respect for the Ute People is made clear by his reports to various political entities of what he perceived as their shortcomings, including but not limited to, lack of a written language, ambition, personal hygiene, architecture, spirituality, history, knowledge of healing plants, and morality. The fact that the Ute People actually possessed all of these attributes was clearly lost on a man convinced of his own superiority and importance as a purveyor of benevolent civilization.

By December of 1878, Meeker was already complaining to the Commissioner of Indian Affairs, Ezra Hayt, that “there are four stores on the northern border of the reservation which sell ammunition. As a consequence the Indians all go to those stores to sell buckskins and expend what money they can get hold of, so that with the trade of the few settlers, these establishments are doing a thriving business. Thus it is that with abundant supplies at this agency (categorically untrue—author’s notation), half the Indians are off their reservation.” His letter went on to state, “This condition of things leads to continued demoralization of the Indians; for, first, the traders tell them they ought to hunt and not to work; and, second, the Indians interfere with the cattle of stockmen by keeping their horses on their range, eating what they call their grass.”⁴⁷

The new agency was completed in the spring of 1879. Meeker continued to be frustrated by the disinterest the majority of the Ute People exhibited toward agricultural pursuits, building fences, abiding by his directives, or even remaining on the agency itself. In the spring of 1879, a large group of the Indians departed White River to travel north for hunting. The agent objected to the Utes roaming off the reservation and by March of 1879, he again sent a telegram to the Indian Commissioner, complaining about an “adverse faction” among the Utes “who will not work” (Meeker’s italicization). In the same message, Meeker related that he had already sent a report to the commander of Fort Fred Steele, near Rawlins in Wyoming Territory, regarding the sale of ammunition to the Ute People. According to Meeker, two stores, one on the Yampa River and one on the Snake River, regularly sold ammunition to the Utes and, according to the telegram, the new agent had “repeatedly reported” this fact to Commissioner Hayt, although the 1879 Annual Report of the Commissioner of Indian Affairs records only two such communications. Fort Fred Steele was located in the military Department of the Platte, commanded by General George Crook. The White River Agency, however, was

situated within the jurisdiction of the Department of the Missouri. The fort in Wyoming Territory was the nearest post and presumably this is why Meeker was sending dispatches to Major Thornburgh, the commander. Meanwhile, Governor Pitkin had literally decided to pour fuel on the fire, sending a telegram to Commissioner Hayt accusing the Utes of willfully destroying timber in the forests of Colorado. His accusations (specified in the following cable reprinted in *The Colorado Daily Chieftain*, July 8, 1879) were cause for immediate action and Hayt demanded that Meeker promptly secure the Indians' return to the reservation.

EXECUTIVE DEP'T, JULY 5, 1879.

Hon. E.A. Hayt, Commissioner of Indian
Affairs, Washington:

Reports reach me daily that a band of White River Utes are off their reservation, destroying forests and game near North and Middle Parks. They have already burned millions of dollars of timber, and are intimidating settlers and miners. I have written Indian Agent Meeker twice, but fear letters have not reached him. I respectfully request you to have a telegraphic order sent troops at nearest post to remove the Indians to their reservations. If the general government does not act promptly, the state must. Immense forests are burning throughout Southwestern Colorado, supposed to have been fired by Indians. I am satisfied that there is an organized effort on the part of the Indians to destroy the timber of Colorado. The loss will be irreparable. These savages should be removed to the Indian Territory or New Mexico where they can no longer destroy the finest forests in this state.

FREDERICK W. PITKIN,
Governor

Also, in response to Pitkin's telegram, Major Thornburgh was sent on a fact-finding mission and in a report to General Crook, dated July 27, 1879, he stated, "I made inquiries and could not find such a state of affairs to exist, but did find that the Indians had killed a great deal of game and used the skins for trade. The miners they visited in this section were not molested, but on the contrary were presented with an abundance of game. No stock was molested, and so far as I can learn no one attributes the burning of timber to these Indians." Crook forwarded Major Thornburgh's report to General Sheridan, commander of the Military Division of the Missouri, along with several written statements from settlers, ranchers and miners, unequivocally asserting they had no knowledge of the Utes starting forest or grass fires, depredating or engaging in any exchanges with whites beyond trading.

The summer of 1879 in Colorado was extremely hot and there was a severe drought. That

particular year has been recorded as the fourth driest on record. Since the arrival of white settler-colonists in the region, there had been a history of forest fires set by them through carelessness or willful destruction as a way to access game animals. In one instance, railroad “tie men” (workers who felled trees and manufactured railway ties by hand) actually admitted to causing fires that had been attributed to the Utes. In the interest of vilifying the Ute People, however, Pitkin and his cronies found it expedient to repeatedly and continually accuse the Utes of intentionally starting fires. They went so far as to blame the Utes for burning down a house belonging to J.B. Thompson, brother-in-law of ex-Territorial Governor McCook. Two Ute men, known as “Bennett” and “Chinaman” were identified as the perpetrators and warrants for their arrest were issued; but when Captain Jack went to view the location, he discovered that the house and ranch buildings were intact. The fiction of Utes burning forests and grasslands was validated by Meeker himself, however, and the deception extended clear to the office of the secretary of the Interior, who sent Meeker instructions to identify any Indians starting fires and to turn them over to civil authorities. The sheriff of Grand County went to the reservation with orders to arrest the Indians charged with burning Thompson’s house, but the two Ute suspects were never apprehended.

Already unhappy with Meeker, the Ute People were further angered that he was accusing them of setting fires. They were kept aware of his allegations and statements to the newspapers by a man named Hannibal Peck, a trader who had a store on the Yampa River. He was friendly with the Utes and was one of the store owners who had incurred Meeker’s ire for selling ammunition to the Indians. Unable to restrain his vociferous opinions, Meeker’s dealings with the Utes had already been negatively impacted by a report he had made to a Denver Tribune reporter in July of 1878, stating, “The Indians are a race of savages... and it will require ages to eradicate the bad blood in them.” Then, in the summer of 1879, W.B. Vickers, editor of the Denver Tribune and personal secretary to Governor Pitkin, published the following:

The Utes are actual, practical Communists and the Government should be ashamed to foster and encourage them in their idleness and wanton waste of property. Living off the bounty of a paternal but idiotic Indian Bureau, they actually become too lazy to draw their rations in the regular way but insist on taking what they want wherever they find it. Removed to Indian Territory, the Utes could be fed and clothed for about one half what it now costs the government. Honorable N.C. Meeker, the well-known Superintendent of the White River Agency, was formerly a fast friend and ardent admirer of the Indians. He went to the Agency in the firm belief that he could manage the Indians successfully by kind treatment, patient precept and good example. But utter failure marked his efforts and at last he reluctantly accepted the truth of the border truism that the only truly good Indians are dead ones.⁴⁸

If, in fact, Peck had read this particular article to some of the Utes and word had gotten back to the balance of the People, Meeker's credibility would have been entirely diminished, especially as the Utes were still endeavoring to have him removed as agent.

In another effort to abide by white people's procedures, Captain Jack and a small delegation of chiefs traveled to Denver in August to meet with Governor Pitkin to request assistance in removing Meeker as agent. He explained that Meeker demanded they work for supplies that were already owed them, according to the agreements made with the U.S. government. He complained that the agent was attempting to plow up their most valuable horse pastures, wanted to force their children to go to school, and was slaughtering their cattle herd for meat, even though White River Agency beef rations were contracted for from outside the reservation. Pitkin was decidedly and predictably unsympathetic, telling the chiefs they should abide by Meeker's directives and allow their children to attend school. Nicagaat (Jack) informed the governor that the Ute People sought only to live according to their traditions and wanted their children to be able to do the same.

Tensions grew as Nathan Meeker continued to force his will and agrarian ideals on the Ute People. Having already plowed and irrigated an 80-acre parcel adjacent to the agency buildings, in early September of 1879 he proceeded to plow more pastureland occupied by Ute families and their livestock. He became convinced the Indians were merely being recalcitrant when they resisted and, in a letter to Commissioner Hayt, the agent discounted the Utes' concerns. He informed Hayt that his employees had been shot at during their work, but nonetheless he would continue with the plowing, "whether unmolested I cannot say. This is a bad lot of Indians. They have had free rations so long and have been flattered and petted so much, that they think themselves lords of all."⁴⁹ Again, his disrespect and disdain for the Indians was patently evident and illustrated his unsuitability in maintaining cordial relationships with the White River Utes. This, of course, would have been monumentally desirable in the estimation of Pitkin, Teller, Mears and many other Colorado investors and politicians who would benefit from a catastrophic outcome.

Before Meeker's letter to Commissioner Hayt had even reached him, the agent had sent a histrionic telegram on September 10, (as documented in the Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1879, beginning at XVIII), stating that he had been physically attacked and injured by a principal chief named Johnson (Canalla), a Ute leader who had continually sought to counsel Meeker and mediate for him. He was also the head of one of the families Meeker was forcing to relocate in order to plow up pastureland. In truth, Meeker had recently been injured in a wagon accident and the chief had merely held him firmly by the shoulder, according to his later testimony in the White River Ute Commission investigation. Canalla testified that Meeker had told him he was "troublesome" and that it was likely he would wind up in jail. In response, the chief had told him that "it would be better for another agent to come, who was a good man, and was not talking

such things.”⁵⁰ He then supposedly had taken hold of Meeker by the shoulder and told him he should go, without striking him or harming him to any further extent.

Meeker had also reached out to Pitkin on the same day regarding this so-called attack, for upon receiving a cable informing him the “War Department has been requested to send troops for your protection. On their arrival cause arrest of leaders in late disturbance and have them held until further orders from this office,” Meeker’s reply was “Governor Pitkin writes, cavalry on the way.”⁵¹ It is possible too that the alacritous military response to Meeker’s duplicitous accusation of an assault was not only prompted by Pitkin’s influence but also by the agent’s erstwhile relationship with Brigadier General Pope, the military commander of the Department of the Missouri. Allegedly, Meeker had written glowing dispatches about Pope during the Civil War and this resulted in Lincoln appointing Pope as head of the Army of Virginia. Meeker had traveled to Denver to see General Pope while the officer had been visiting the city, a short time before the agent accused Johnson of the attack on his person.

On the 25th of September, Major T.T. Thornburgh, commander of Fort Fred Steele, sent Meeker a communiqué that he was en route as ordered by the General of the Army. The message, delivered by one of his guides, stated, “I have heard nothing definite from your agency for ten days, and do not know what state of affairs exists—whether the Indians will leave at my approach or show hostilities. I... desire you to communicate with me as soon as possible, giving me all the information in your power, in order that I may know what course I am to pursue. If practicable, meet me on the road at the earliest moment.”⁵² It seems that at this moment, Nathan Meeker panicked. He had purposely kept the Utes ignorant of the fact that he had sent telegrams requesting troops and now that word had reached them that soldiers were on their way, they were overtly indignant and agitated.

In addition to their angst regarding Meeker’s empty accusations, the Utes were acutely aware that the Colorado citizenry wanted them gone and that several bills had been introduced in the U.S. Congress requesting that the Indians be removed to Indian Territory or be consolidated on lands that were undesirable to settler-colonists. They were most probably entirely cognizant of the “Utes Must Go!” rallying cry printed and reprinted in newspapers and certainly were aware of the events surrounding the massacre at Sand Creek. For these reasons, the Ute People were more than justified in their distress at the approach of a large column of soldiers, fearing for their families’ safety and their immediate future. They surely had no cause to trust that Nathan Meeker would advocate for them or defend them in any way, especially in light of his duplicity, contempt, and ignorance.

Perhaps realizing he may have over-reached himself, Meeker sent a message to Major Thornburgh with an employee of the agency requesting he halt the soldiers and make camp. He informed the officer that the Indians were “greatly excited” and asked that Thornburgh visit the agency with five men in order to allay the Ute People’s fears. Meeker stated that “The Indians seem to consider the advance of troops as a declaration of real war.”⁵³ Thornburgh sent a

reply that he would camp and come in to talk and that Meeker should say to the Indians that he had not come to make war, but that military action depended on them. It seems that Meeker approved of Thornburgh's intentions to make camp approximately 50 miles distant and come in with five men, but after meeting twice with Ute representatives, including Captain Jack, the officer inexplicably changed his mind and, on September 29, crossed Milk Creek, the northern boundary of the reservation, with his entire column of troops. Seeing this as an act of war, Ute warriors lined a ridge above the soldiers' position, prepared to defend their home from what they perceived as an imminent threat.

Initially, Major Thornburgh deployed his troops along either side of the White River Road then rode forward to join his adjutant, Lieutenant Cherry, and waved his hat at the warriors. Several of the Utes waved their hats in response and two of them dismounted and began to descend the side of the ridge toward the officers as if to parlay. Suddenly, a shot rang out and Major Thornburgh wheeled his horse to return to his soldiers. Almost at once, he was shot out of the saddle. A heated battle commenced and the troopers fought their way back to the supply train, using wagons and dead horses and other gear for breastworks, while an officer by the name of Captain Payne took command. It remains an enigma whether a soldier or a warrior fired the first calamitous shot.

When word of the battle reached the White River Agency, Ute warriors attacked the male employees, blaming Meeker and his followers for the conflict on Milk Creek. A few Indian sources later claimed the assault on the agency was instigated by drawings created by Meeker and discovered on Thornburgh's body that depicted slaughtered agency employees, clearly intended to inspire the military to advance. All male agency employees were swiftly dispatched and the two Meeker women were taken hostage along with another woman, Flora Price, with her two small children. The agency women were not harmed except for a slight wound Arvilla received on her leg as she was fleeing across a plowed field. They were taken to the Ute camps and hidden away where the Ute women and children had already retreated for safety. None of the bodies of the men were mutilated or scalped, the only exception being Meeker himself. He had been shot in the head and stripped naked and some of the young men wrapped a logging chain about his neck and dragged his body around the agency grounds behind their ponies. Later, someone jammed a barrel stave down his dead throat as if to finally shut him up.

6

On October 2, Ouray was about to depart on a hunting trip when news reached him of the battle and the capture of the Meeker women. He immediately sent the following message to the White River Utes:

To the chief captains, headmen, and Utes at the White River Agency. You are hereby requested and commanded to cease hostilities against the whites. Injur-

ing no innocent persons or any others farther than to protect your own lives, and property from unlawful and unauthorized combinations of horse-thieves and desperadoes, as anything farther will ultimately end in disaster to all parties.

— Ouray.⁵⁴

On October 9, this message was sent to Commissioner Hayt by the agent at Los Pinos:

Employé Brady and escort of Indians arrived from White River, reports Utes recognized and obeyed Ouray's order, withdrew, and will fight no more unless forced to do so. If soldiers are now stopped trouble can be settled by peace commission to investigate facts, and let blame rest where it may. This will save life, expense, and distress if it can be accomplished.

STANLEY, Agent.⁵⁵

I concur and indorse the above.

OURAY, Head Chief Ute Nation.⁵⁶

On October 13, Agent Stanley received the following message from the secretary of the Interior:

Your dispatch received. Tell Ouray that his efforts are highly appreciated by the government. In view of the attack made upon the troops and massacre of agent and employés the troops will have to proceed to White River Agency. Ouray should endeavor to prevent any resistance to this movement. The troops are now in great force, and resistance would result only in great disaster to the Indians. The hostiles will have to surrender and throw themselves upon the mercy of the government. The guilty parties must be identified and delivered up. We shall see that no injustice is done any one. Peaceable Indians will be protected. Ouray's recommendations for mercy in individual cases will be respected as far as the general interest may permit. Special agents are being dispatched to Los Pinos with further instructions.

C. SCHURZ, Secretary.⁵⁷

The Battle of Milk Creek officially ended when the besieged troopers were relieved by Colonel Wesley Merritt and the Fifth Cavalry. The officer later reported 12 soldiers killed and 43 wounded. Merritt did not view the scene at the agency until October 11 and, of course, his report of what he witnessed was dramatic and overwrought. A short time later, two journalists for the Denver Tribune provided incendiary descriptions of the scene in their hastily published

book entitled, *The Ute War; a History of the White River Massacre*. Immediately, the “Meeker Massacre” became the topic of a myriad of enraged newspaper accounts and the citizens of Colorado and their governor demanded revenge and the immediate removal of the Utes from their environs. In the whites’ estimation, “Father Meeker” had been martyred on the altar of civilization and Pitkin proceeded to write his own newspaper diatribes, almost gleeful in their tone. Two companies of the Colorado militia were dispatched with orders from the governor to kill all Indians found off the reservation. Additionally, on October 18, a letter from Rose Meeker, the agent’s other daughter, was published in *Silver World*, the Lake City newspaper founded by Otto Mears. It included the following excerpt:

The life of one common white man is worth more than the lives of all Indians from the beginning of their creation until the present time. And yet such a man as my father... is now ignominiously put out by the hand of a savage foe, whose life and soul is not worthy of a dog.

There was little doubt that the Utes were to be vilified to the greatest extent and any organization, bureau or entity that defended them or elucidated the facts would not be countenanced.

On October 14, Charles Adams received a telegram from Secretary of the Interior Carl Schurz, a fellow German immigrant, instructing him to proceed, as special agent, to the Los Pinos Agency on the Uncompahgre River and there to meet with Ouray. With the chief’s assistance, Adams was supposed to make contact with the “hostile Utes” and effect the release of the women captives. It was assumed that they were still alive. Adams traveled to the Ute camps on Grand Mesa accompanied by several chiefs, including Shavano, and some white men from the agency. When he was allowed to see and interview the women, they all seemed to be in acceptable condition, even wearing tidy clothing. All three women reassured him privately that they had not be sexually violated. Adams wrote a dispatch to Secretary Schurz stating that the Utes had returned the women to his custody and that “no indignities had been offered to them.”

The women were sent with a man named Captain Cline back to Ouray’s farm and thence over the mountains to the railway depot at Alamosa, Colorado. From there, they were transported to Denver. Adams traveled to the main Ute camp to meet with the White River chiefs, at which time Captain Jack apprised him of the events leading up to the battle and the attack on the White River Agency. According to Charles Adam’s account in the *Testimony in Relation to the Ute Outbreak* as presented to a U.S. House of Representatives committee, Jack (Nica-agat) told him that Meeker had informed him that the soldiers were bringing a wagonload of shackles and ropes to either hang them or take the Utes to prison. Jack and some of the chiefs had gone to speak with Thornburgh and he had agreed to halt his column until they could meet again, but the officer had brought his troops onto the reservation instead of doing as he had

promised. Jack insisted that the soldiers had fired first. He also told Adams that when some of the warriors rode back to the agency and informed the others that the soldiers were fighting the Utes, they killed the agency men and Meeker, blaming him for the conflict.

In his testimony, Adams was asked the following question by the Chairman of the Committee on Indian Affairs of the House of Representatives:

Q. I understood you to say that the Indians complained that the agent and the governor together were endeavoring to get them into a difficulty so as to drive them from their reservation. Did those charges take any definite shape? If so, what was it? Was there anybody implicated besides the agent, or was the agent implicated?

A. Well, Chief Jack said he saw the whites were becoming angry at the Indians, and he went to Denver to see the governor of the State and find out why they were so hostile; he said he went to see Governor Pitkin, and asked him to use his influence to have Mr. Meeker removed, telling him that as long as Mr. Meeker was there he was afraid that trouble would come. Jack said that his request was not considered at all, and that Governor Pitkin did not act as if he wanted to help them at all.⁵⁸

Eventually, Charles Adams was able to negotiate an agreement with the Utes to have the guilty parties in the Meeker killings punished. A commission was to be convened at the Uncompahgre Agency in order to investigate and Ouray promised that the White River Utes would cooperate. Brevet Major General Edward Hatch, Adams, and Ouray were to be the commissioners in charge of the investigation. It would take Hatch several days to journey to the Uncompahgre location, however, so Adams decided to travel to Greeley, where the Meeker women and Flora Price were now domiciled, in order to interview them more thoroughly. He cabled Schurz of his intentions and received his approval, acquiring the services of a stenographer in Denver on the way. Meanwhile, in an interview with the New York Herald on November 1, 1879, Flora Price had made it plain that the Utes had not used her badly, even though she was occasionally made to work at "drudgery" such as hauling water. Perhaps for this reason, Adams conducted an examination of Mrs. Price first.

According to his statement to the Committee on Indian Affairs, Adams was apparently most interested in Ute individuals who had been cruel to the women or had offered bodily harm, especially rape. This seems in direct contradiction to his earlier telegram to Secretary Schurz stating the women had suffered no indignities. It seems quite probable that he had received pressure from either Governor Pitkin (with whom he had had private meetings while in Denver) or agencies in Washington to make a case for rape in order to provide justification for the removal of the Utes from Colorado. It is clear from his own testimony that Adams put

pressure on Price to say she had been violated. Disturbingly, after having told the New York Herald journalist that Johnson (Chief Canalla) “is the best” and that his wife (Ouray’s sister) had been very kind, she related to Adams that Johnson had raped her. When Adams spoke to the Meeker women, they also changed their story and claimed they had been raped. Adams endeavored to make the point that the women were reluctant to have the truth come out and only admitted to having been outraged after he reassured them he would not give their stories to the newspapers. This makes small sense, considering their testimony was (with their knowledge) to be entered into evidence to be presented to the U.S. Congress, hardly an eventuality guaranteed to preserve their privacy.

Subsequent to his interviews with the women in Greeley, Charles Adams returned to the Los Pinos (Uncompahgre) Agency for the White River Commission. After six weeks, during which none of the Ute witnesses testified to the guilt of any of their people in the killings on the White River Agency or culpability in the battle at Milk Creek, the white commissioners became exceedingly frustrated. The following is an excerpt from the commission transcript:

General Adams: I believe... that none of them want to speak the truth, and it is, therefore, almost unnecessary to go any further. They have refused to mention a single name, while they well know the names of all of them; and I now represent the situation to Ouray, so that he may recommend to us some other course, whereby we can execute the orders of the government. The government wants us to find out who were engaged in the outbreak. We want to know the names, and if we cannot find them out we had better go home.

Chief Ouray: I cannot force them to say what they do not wish to. For that I brought them here—that they might speak for themselves.⁵⁹

Manifestly aggravated, Adams and General Hatch decided to accept the testimony of Flora Price and Josephine Meeker as to which warriors were implicated in the attacks on agency employees and Agent Meeker. This was in spite of the fact that the women had already admitted they had not witnessed any actual killings, having hidden themselves in the milk house. They had stated that they did not emerge until all the shooting had ceased and they had attempted to escape while the Utes were packing their ponies with annuity goods. It was during this escape attempt that the Utes had captured them. Notwithstanding this and Ouray’s protests, their statements taken in Greeley were read into evidence for the White River Commission.

As a result of the women’s accounts, 12 men were identified as culprits and were to surrender themselves for trial in the East. The suspects agreed to this and were allowed a few days to arrange their affairs while General Hatch prepared wagons and supplies. When the departure day arrived, however, the Ute men refused to accompany Hatch, including, unsurprisingly, the four men accused of rape by the women. Ultimately, one last Ute delegation traveled to Washington D.C. in January of 1880.

Accompanied by Otto Mears and Charles Adams and several Ute representatives, including Chipeta, Ouray hoped to protect the Utes' rights and resolve the controversy surrounding the battle on Milk Creek and the killings at the agency. While boarding their train in Alamosa and again during stops along their route through Colorado, the Utes were threatened and verbally assaulted. In Pueblo, they had lumps of coal thrown at them. Upon arrival in Washington, Secretary Schurz placed them under stringent protection, not even allowing newspaper reporters to have access. Whether this was for the Utes' benefit or in the interest of managing the overall narrative, it is not clear. No matter what Ouray hoped to achieve, Washington and Colorado politicians were mainly interested in again drastically reducing the size of the Ute reservation or removing them from the state altogether. Senator Teller and Governor Pitkin voiced their insistence that the Utes be banished. It seemed that the Uncompahgre Utes were to be included with the White River Utes in whatever was decided, especially due to the fact that they had not handed over the perpetrators of the "Meeker Massacre." In frustration, Ouray told Secretary Schurz, "How can I give them up? Why do you hold my tribe responsible for what those men did? We are Uncompahgre; they are White River Utes, and not under my immediate control. If a murder were committed here in Washington, would your authorities make the whole population suffer for it?" (No citation information available.) It should be noted that holding the Uncompahgre Utes responsible for the events at White River was in direct violation of Article 17 of the 1868 treaty, which stated:

Provided, That if any chief of either of the confederated bands make war against the people of the United States, or in any manner violate this treaty in any essential part, said chief shall forfeit his position as chief and all rights to any of the benefits of this treaty: But, provided further, Any Indian of either of these confederated bands who shall remain at peace and abide by the terms of this treaty in all its essentials, shall be entitled to its benefits and provisions, notwithstanding his particular chief and band have forfeited their rights thereto.

In his testimony to the House Committee, Pitkin embarked upon a litany of men's deaths at the hands of the Utes, beginning in 1859, ending with, "These were citizens of the State. Aside from these men, bodies have been found and have been identified. I have referred here to forty-five citizens of the State that have been killed by the Indians, and I know that the list is not complete."⁶⁰ His motivation was obvious and he was insistent that only one Ute person was ever murdered by a white man. He goes on to say, "I do not think the people of the State like an Indian. I think the great mass of the people of the State have a sort of chill run over them when they come in contact with them."⁶¹ When a committee member asked Pitkin if Colorado citizens had wanted the Utes removed prior to the "massacre," he answered, "Before the massacre there was a general feeling that the Indians were occupying very valuable mineral

land which was of no use to them, and which the poor men of the country now living in Colorado, and constantly coming in there, should have the right to enter upon and use.”⁶²

Given the forces and prevarications aligned against them, the Utes were not bound to find justice in Washington, D.C. Ouray gave honest and concise testimony, but to no avail. When the chairman of the committee asked him straight out what he thought was the actual explanation for the killings on the agency, Ouray answered, “I think that Meeker wanted all the time to get them out of the land—wanted to make some row in order to get them off the land. That is the way it seems to me.”⁶³ This definitely implies that Meeker was, indeed, a tool of the powerful business and political interests in the state of Colorado. Pitkin’s testimony must have also demonstrably confirmed the political machinations behind selecting Meeker as agent for White River, but the Ute People were to find no champion among the House committee members. Interestingly, Commissioner of Indian Affairs Ezra Hayt made this statement in his 1879 report,⁶⁴ completed prior to the conclusion of the White River Commission and the testimony taken by the Committee on Indian Affairs of the House of Representatives in 1880 (Hayt was fired for malfeasance in February 1880):

The “irrepressible conflict” between the white man and the aborigine may be turned to good account for both parties in the accomplishment of desirable results. Let it be fully understood that the Ute Indians have a good and sufficient title to 12,000,000 acres of land in Colorado, and that these Indians did not thrust themselves in the way of the white people, but that they were originally and rightfully possessors of the ‘soil, and that the land they occupy has been acknowledged to be theirs by solemn treaties made with them by the United States, and that the white people, well knowing these facts, took all the responsibility of making their settlements contiguous to the home of the red man.

It will not do to say that a treaty with an Indian means nothing. It means even more than the pledge of the government to pay a bond. It is the most solemn declaration that any government of any people ever enters into. Neither will it do to say that treaties never ought to have been made with Indians. That question is not now in order, as these treaties have been made and must be lived up to, whether convenient or otherwise.⁶⁵

By early March, Ouray and Secretary Schurz had designed an agreement they thought would, perhaps, satisfy the settler-colonists of Colorado, which was no easy task. As Schurz stated in his report to the House Committee on Indian Affairs on May 11, 1880, “Attempts at a peaceable settlement... have met with severe criticism, and seemed to be looked upon in some quarters as an unwarrantable interference on the part of the Interior Department with the inherent right of some people to have an Indian war when they please.” According to Ouray,

“It seems to me the best thing we can do in order to maintain peace with the whites.”⁶⁶ By this time, the Ute chief was extremely ill with Bright’s Disease and was apparently hoping for some resolution that would not result in the absolute devastation of the Ute People’s future. The Uncompahgre People were to have a small reservation near the mouth of the Gunnison River, if enough agricultural lands could be found. If not, then some other location or otherwise, in Utah. It seemed inevitable that the Uncompahgre Utes were not going to be allowed to remain in Colorado, given all the contingencies included in the agreement. The White River Utes were summarily expelled from Colorado according to the terms of the 1880 agreement. “The White River Utes agree to remove to and settle upon agricultural lands on the Uintah Reservation in Utah.” Some of the White River people faded away to merge with the Southern Ute band. By May of 1881, most of the White River people had made their way to Utah.

Allotments in severalty were to be included, a measure that Secretary Schurz had been asserting would lead to the “civilization” of Indians for quite some time. He wanted to “individualize” Indians by giving them title to their lands in the same manner that whites held theirs. Schurz’s ultimate goal was to assimilate and educate all Indians into being American citizens. He also, of course, expected them to live and work as white people in complete disregard of their own preferences or cultural traditions. Secretary of the Interior Schurz was a great believer in Richard Henry Pratt and his industrial boarding schools, placed far away from the home reservations so that Indian youth would not be “too much exposed to the influences of Indian life.” Five commissioners were to be appointed by President Hayes who were supposed to acquire the requisite number of signatures to ratify the agreement, three-quarters of the male Ute population, but also to take a thorough census, disaggregating the families as being members of the Southern Ute band, the White River band and the Uncompahgre band.

Along with all the other provisions contained in the 1880 agreement, a clause was included that would annually pay five hundred dollars to the Meeker women and Mrs. Price from the Ute monies. There were also some annual payments to other family members of employees killed at the agency. In addition, there were conditions that the Ute chiefs would agree to assist in the apprehension of those Ute men accused of killing the agency men (still based upon the women’s testimony), promising to surrender them for trial and punishment. In the end, Captain Jack spent a year in Fort Leavenworth prison, but he was the only Ute man to be punished in this manner. Ironically, he had been involved in the battle with Major Thornburgh, for which the Utes were not held culpable, but was never named by any of the women as having been seen at the agency prior to or during the attack.

Within the 1880 agreement was incorporated the fate of the Southern Utes, recognized as having had no participation in either the battle on Milk Creek or the killings at the White River Agency, stating, “The Southern Utes agree to remove to and settle upon the unoccupied agricultural lands on the La Plata River, in Colorado; and if there should not be a sufficiency of such lands on the La Plata River and in its vicinity in Colorado, then upon such

other unoccupied agricultural lands as may be found on the La Plata River or in its vicinity in New Mexico.”⁶⁷ Predictably, and assisted by pressure from Senator Teller, the five presidentially appointed commissioners (one of whom was Otto Mears) eventually decided there was to be no viable site for an Uncompahgre Ute reservation within the boundaries of the state of Colorado. As Secretary Kirkwood (having replaced Schurz) later stated in his Letter from the Secretary of the Interior to the Committee on Public Lands of the U.S. Congress, 1882, “the Ute Commission in examining the lands in the reservation in Colorado, to ascertain if such lands as are provided for in the Ute agreement could be found therein for these Indians... it was found that suitable lands could not be obtained upon their old reservation in Colorado.”

After several councils at the Los Pinos Agency on the Uncompahgre River during the summer of 1880, most of the Uncompahgre and Southern Utes would not ratify the agreement. Ouray worked persistently to convince them to sign. Terribly ill, he eventually traveled to the southern agency to argue for ratification. It was there that Ouray died in August of 1880. Notably, according to Fred A. Conetah in his book, *History of the Northern Ute People*, Ouray never signed to ratify the agreement, even though he had signed the original version in March. After Ouray’s death, the Utes flatly refused to ratify the agreement. Otto Mears, appointed as one of the five Ute commissioners by President Hayes, began to bribe the Ute men for their signatures at two dollars apiece. The bribes and the death of the respected Kaniache, struck by lightning, convinced the Utes to finally sign.

According to Fred Conetah, Ute Commission Chairman Manypenny heard about the bribes and would not approve the agreement. He subsequently reported his findings to Secretary Schurz and Mears was ordered to Washington for trial. Unfortunately, Schurz was replaced by Samuel Kirkwood the following year, under the auspices of President Garfield, and the charges were dropped. Kirkwood actually reimbursed Mears for the money he had spent in bribing the Utes. The Uncompahgre Utes, however, still believed they would be staying in Colorado, albeit on a much smaller reservation. Mears had seen the value of the country at the mouth of the Gunnison River and made a fallacious report that sufficient agricultural lands were not available at this location, his claims backed by the other two commissioners accompanying him to the site, one Judge McMorris and a Mr. Russell. When finally informed they would have to leave Colorado, the Uncompahgre Utes refused to do so. The attitudes of the Colorado settler-colonists is summed up by this small entry in the *Ouray Times* of April 10, 1880:

The Utes should be utilized. The only way we can see to make them of any earthly use, is to plant them. They would make good manure.

Preparations for the removal to a new reservation began, annexed to the Uintah Reservation in Utah, and Otto Mears acquired the contract to build the road the Utes would be forced to travel in their exodus, as well as the new agency headquarters. The Uncompahgre Utes remained unwavering in their refusal to leave their beloved homelands. Colonel Ranald S. Mackenzie was ordered from Fort Garland to the Uncompahgre River valley with several companies of cavalry and infantry to establish a cantonment there, approximately four miles north of the Los Pinos Agency. The presence of the soldiers sent an unambiguous message that the Utes were not to be given a choice regarding their banishment from the state of Colorado. According to an excerpt from the Gunnison Review in July of 1881, "The Utes saw very plainly that, should they offer resistance, they would be summarily dealt with by the military and the Government."

In August, Colonel Mackenzie was ordered to take the necessary steps to force the Utes to move to the new reservation. According to Fred Conetah, one group of people attempted to make a run for it. This may have been Colorow, who is recorded in other sources as having led a small group of warriors against the soldiers, but was immediately thwarted by a show of field artillery. At this point, Mackenzie surrounded the Utes and issued orders that the People had 24 hours to prepare for departure. Approximately 1,400 Ute men, women, and children gathered their belongings to travel the 350 miles to the new agency. Several white eyewitnesses later described the poignancy of the scene, but they were, no doubt, pleased to see them go. On September 7, 1881, the last of the Uncompahgre Utes left Colorado under military supervision. According to several sources, General John Pope subsequently reported that "the whites were so eager and so unrestrained by common decency that it was absolutely necessary to use military force to keep them off the reservation until the Indians were fairly gone." Numerous eyewitness accounts also corroborate this. Supposedly, Otto Mears rode along with the Utes and one warrior endeavored to shoot him.

After living within their cherished Native country for countless eons, the Utes' homelands were finally and successfully stolen from them by the waves of settler-colonists determined to desecrate them with extractive violence. The Moughwach, Weeminuche, and Kapuuta bands were the only Ute People that remained in the state of Colorado.

In 1881, John Coulter of Clear Creek County, Colorado introduced House Bill No. 178. Section 1 of the bill read as follows: "That any person who shall produce the scalp of any Indian or skunk found in this State, shall receive a reward or premium of twenty-five (25) dollars for each Indian or skunk scalp produced, to be paid out of the State treasury, as hereinafter provided."

ENDNOTES

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PART III

Narrative of Ute History Post-1881 to Present

EXILE AND BETRAYAL

Following their official removal from the state of Colorado, the exiled Ute bands (the Uncompahgre and White River People) found their new home to be less than acceptable. The land was barren and unproductive and completely inferior to the fertile country they had been forced to abandon. To make their circumstances more untenable, the new reservation was surrounded by mountainous terrain, abundant with resources, from which they were banned... strictly reserved for white settlement. The relationships between non-white inhabitants of the region and the Utes were inimical, and dealings between the three bands forced to divide the reservation could often be tense. There were cultural differences as well as historical mistrust, and the Uintah People understandably resented having to share their reservation with the newcomers.

Relationships between the Utes and their agents were also far from cordial, especially as annuity payments were often delayed and hunger and privation were common. Attempts to negotiate with Indian Bureau personnel were fruitless, and Ute leaders made frequent and ineffective requests that Ute delegations be sent to Washington to meet with the commissioner of Indian Affairs in order to improve conditions. Agents also insisted on the people becoming farmers. This persistence was all too familiar to the Utes, especially those from White River who had had to deal with the heavy-handed bullying of the unfortunate Agent Nathan Meeker. They, of course, refused to become agriculturalists, and were also impervious to bureaucratic pressures that sought to turn their efforts to cattle ranching.

As a result of homesickness and the need to hunt for sustenance, White River and Uncompahgre people traveled back into northwestern Colorado on a regular basis in order to hunt and gather. They insisted that they had not given up their right to hunt in their ancestral homelands through any treaty or agreement. Many of them recalled that the Brunot Agreement had given them the right to hunt on land ceded to the government as long as they remained peaceful. It is probable that some of the Ute People continued to drift back into Colorado to follow their traditional lifeways well into the early 20th century. Numerous archaeological sites of Ute encampments have been recorded around northwestern Colorado and dendrochronology studies show that over half of these were in use after the forced removal of the Ute People from the region.

Whites in Colorado, who had swiftly settled areas just recently vacated by the exiled Ute Peoples, were predictably strident in their complaints that Indians were encroaching on their grazing lands. Abundant newspaper articles from the time period (and persisting past the turn of the century) expose the prevailing and virulent racism common among these settlers, rekindled by the occasional sightings of roving Ute families returning to their beloved homelands. More than once, the Utes were accused of ruthlessly slaughtering game animals, only to have the truth later reveal that the accusations were false, or that the offending party was a group of tourists engaged in senseless carnage. There were also ubiquitous and vociferous declarations that another “Ute war” was imminent.

Discontent among the Ute People in Utah precipitated a request from the Indian Bureau that a military post be established in order to place the Uintah and Ouray reservation under military supervision. For expediency, the Indian Bureau had already consolidated the two Utah Ute agencies into the Uintah and Ouray Agency Headquarters at Whiterocks. In 1886, Fort Duchesne was constructed and occupied by troops of the Ninth Cavalry. The Ute People attempted to prevent the soldiers from entering the reservation, but hurried negotiations prevailed and the troopers proceeded to complete the fort and maintain a presence there.¹ The fort remained active long after most “frontier forts” had been decommissioned. White settlers in the region, as well as many of the agents, repeatedly warned that chaos and violence would ensue if the Utes were no longer under military control, in spite of the fact that the Ute People endeavored to remain peaceful and abide by their agreements. In all probability, the actual motivation had to do with lucrative civilian supply contracts with the army and the associated profits that many locals, corrupt officials, and cattle barons relied upon.

Unfortunately, the military presence at Fort Duchesne did little to protect Ute interests on their own reservation. Whites continued to trespass on Indian lands. Prospectors combed the region in search of mineral wealth, and a lawless community of gamblers, prostitutes, whiskey peddlers, and outlaws established itself just east of the fort. Furthermore, large herds of cattle were brought to graze upon some of the only fertile pastureland belonging to the Ute People. By 1883, significant (and illegal) water diversion was depriving the Utes of essential irrigation

rights. Mormon and other non-Indian farmers settled along the edges of the reservation, eating away at the boundaries like a plague of locusts. The agents and small force of Indian police were virtually powerless to hinder any of the unlawful activity, and the army offered no assistance.

Predictably, when the Ute People engaged in armed conflict with white civilians, the U.S. Army was alacritous in its response. One example of this was an incident that began on July 3, 1884, when Southern Utes skirmished with cattle roundup crews working for some of the most wealthy and powerful cattlemen in the region. They were encamped on South Montezuma Creek in the Blue Mountains and when the Ute band first encountered them, the Indians exhibited the passes that permitted them to hunt off the reservation, issued by Indian Agent Warren Patten. Shortly after, however, three of the cowboys claimed to have found three of their horses among the Ute ponies. (This was a common tactic used by whites to obtain valuable horse flesh without remuneration, used throughout the American West and resulting from the knowledge that authorities, military or otherwise, would always side with non-Indian testimony against that of the Indians).

According to an account written by one of the cow bosses, who was not present at the time, the cowboys went into the Ute herd and seized the horses. One of the Ute men retrieved them and took the ponies back to the Ute camp. When one of the cowboys followed and made a move to rope one of the animals, the Indian pulled a knife and threatened the cowhand in an effort to prevent the thievery. Ute People held their ponies in high regard, and this further attempt of whites to claim the animals would have been extremely offensive. The cowboy precipitously shot the Ute man.

Enraged by this unwarranted act, the Utes attacked the cow camp, stampeding the saddle horses and wounding two of the cowboys. In full retreat, the crew abandoned their wagons, supplies, and entire outfit. On July 5th, troops of the Sixth Cavalry rode out of Fort Lewis at the behest of influential cattlemen, such as the two Carlisle brothers from England, backed by investors from overseas and politically connected in the state of Colorado. The soldiers were joined by approximately 80 heavily armed white volunteers eager for bloodshed. They pursued the Ute band that was accompanied by women and children and included a fighting force numbering less than half of the army and civilian forces. The military contingent finally caught up with the Utes on a steep bluff. The soldiers stopped to regroup, but two of the civilians climbed up toward the Ute position and were killed. Supplies were running low and without artillery, an assault on the bluff was deemed inadvisable. The commanding officer ordered a retreat. The Utes dispersed and made their way home. Agent Patten actually did his best to protect the Southern Utes from reprisals and received much negative press in local newspapers for doing so.²

While minor but often violent confrontations between whites and the Ute People in both Utah and Colorado were not uncommon during this time period, mostly as a result of non-In-

dian encroachment and bad acts, another notable conflict between white settlers and the Ute People took place in 1887, later erroneously known as “Colorow’s War.” Remaining convinced it was allowed by the Brunot Agreement (and in direct opposition to the sentiments of Colorado civilians), many Ute People continued to return to Colorado to hunt, camp, visit sacred sites, and soak in the hot springs of their traditional homelands.³ Chipeta, Ouray’s wife, often camped along the White River. This area remained in the public domain and was used for grazing cattle. On one of these occasions, in August of 1887, several members of the renowned Mouache chief Colorow’s family were camped with Chipeta. The chief himself was camped a little farther north.

Probably in response to complaints made by local settlers and in a bid for reelection, the sheriff of Garfield County, James Kendall, rode into the camp with a small posse and ordered the Utes to depart. Supposedly, Chipeta told him they were within their rights to camp there. She was alone with some other women, a few old men and several children. Terrified by threats and the aggressive behavior of posse members, the Utes fled and hid in the brush, leaving behind their sheep and goats and belongings. The white men subsequently plundered and burned the camp and the small Ute band escaped to find and join Colorow’s camp. Several other groups of Ute People had also been harassed by the posse and were already gathered there for protection.

Shortly after the incident, Colorow’s son, Enny, had come to Chipeta’s camp to rendezvous with his family only to find the lodges burned and ransacked. Fearing for his people, he made a frantic ride back to the reservation in Utah for assistance. Indian Agent Byrnes at the Uintah and Ouray agency became alarmed when Enny reported the ruined camp and missing family. Byrnes alerted the commander at the new Fort Duchesne. First Lieutenant George R. Brunett led 12 soldiers and numerous Ute men east toward White River. Meanwhile, Colorow began leading the combined Ute camps back toward Utah, skirting white settlements and moving slowly due to baggage, elders and livestock. News of the size of the united Ute contingent reached Sheriff Kendall and he spread terror in the town of Meeker, Colorado, leading its citizens into believing they would soon be massacred by Ute warriors. Newspapers fanned the flames. The Colorado National Guard was called up by Governor Alva Adams and volunteers from Pitkin County gathered in Meeker, joining the growing posse under Kendall. The objective of the boisterous assemblage swiftly resolved into a contest between groups as to which would attack the Utes first.

While the Guard and civilians were racing each other west, the Utes had camped near a bend in the river, believing they had already entered reservation lands. They were cooking a meal when the posse opened fire. Shots were exchanged while the Utes fled, hoping to reach a place of safety. One of the Ute men rode out with a flag of truce in an attempt to save the women and children. He was shot in the leg. After about two hours, both sides ran out of ammunition and the fighting ceased. Four whites had died, including one of Kendall’s depu-

ties. Eight Ute People had been killed, including a small child and an infant. During their desperate flight, the Utes had lost all their belongings and most of their livestock.

The posse, volunteers, and Guardsmen decided to pursue the Utes even after they had crossed the reservation boundary. Instead, they were met by Lieutenant Brunett and his soldiers. In a rare occurrence, the cavalry actually protected the Indians and escorted them back to the agency.⁴ The civilian volunteers stole approximately 600 horses, 2,500 sheep and all the Ute possessions left behind. Chief Colorow died a little over a year later.⁵ Supposedly, shortly before he died, the chief spoke of his disdain for whites and their deceiving ways. The civilian volunteers returned home as if they were heroes, no doubt displaying many souvenirs stolen from the Ute People.

POLITICAL ASSAULT AND ALLOTMENT OF TRIBAL LANDS

In an ill-fated reiteration of the Utes' earlier experiences with avaricious non-Indian prospectors in their traditional homelands, trespassers discovered valuable mineral deposits on the Uintah and Ouray Ute Reservation. Two men, Sam Gilson and Bert Seiboldt, promoted the previously disregarded mineral they had found and developed uses for it. Named for the man who made it profitable, gilsonite was useful in printer's ink, asphalt, paint, carbon electrodes, roofing felt, iron foundry moldings, and in other applications. When large deposits were located on the Ute lands in Utah, Seiboldt filed claims on the reservation in 1886 and organized investors to mine veins of gilsonite in the vicinity of Fort Duchesne.

Despite justified complaints from the Ute People, the Indian agent, T.A. Byrnes, recommended the area be removed from the reservation in favor of mining development. He was supported by the commanding officer of Fort Duchesne, who seemingly held the opinion that the Indians would benefit from witnessing the progress and profits of industry, as well as being provided with a new market for their own goods and services. The mining interests were soon awarded what became known as the "Gilsonite Strip." On May 24, 1888, the U.S. Congress passed an act that removed a 7,000-acre strip of land and restored it to the public domain. Despite much protestation from the Ute People, the requisite signatures were procured, and the land was removed from the eastern portion of the reservation. To the future chagrin of Indian agents, military personnel, and the Ute Tribes, a lawless settlement sprang up in the strip that was outside local, military, or state jurisdiction. Trespassing on reservation lands continued in all its variations and the Department of the Interior continued to explore possibilities of removing more areas from the reservation that were considered too barren to be of use to the Indians, while still being intended to benefit white encroachment.

Written into the 1880 Agreement, which had banished the White River and Uncompahgre Utes from Colorado, was a plan for an allotment scheme or "allotment of land in severalty" as specified in Section 3. As settler-colonists pushed into Indian lands and the Indian Appro-

priations Act of 1871 declared that American Indians were no longer members of sovereign nations, United States policy focused on the concept of “civilizing” Native Peoples. Independent Indian Nations that held land in common were to be schooled in the private ownership of land parcels, farming practices, and boundary fences. Indian People would thereby be magically transformed into full-fledged (and acceptable) members of American society. Conveniently, this strategy corresponded with the desires of masses of white Americans still responding to the opportunities offered by the 1862 Homestead Act and miners seeking a cheap and easy road to opulence. It also served the purposes of General Philip Sheridan, General of the Army, who viewed the speedy population of remote regions of the West as paramount to stimulating the prosperity of the nation and ending the “Indian Wars.”

Massachusetts Senator Henry L. Dawes, who considered himself a politician sympathetic to the Indian “cause” of acculturation, was apparently convinced that American Indian lands could be safely secured within the same legal defenses that protected non-Indian property. Consequently, the Republican senator spearheaded the passing of the General Allotment Act of 1887 (also known, appropriately, as the “Dawes Act”). The Dawes Act authorized the U.S. president to survey tribal lands and divide the areas into allotments assigned to individual Indian households. Unallotted land would then return to public domain and therefore be open to white settlement. Interestingly, according to Professor Henry G. Waltmann of Purdue University, “Senator Henry L. Dawes believed that the Utes were not sufficiently educated to benefit from private property. During the next few years, he gradually shifted his position, but only after careful study of the Indians’ conditions and needs.”⁶

Meanwhile, the Utes who had been allowed to remain in Colorado were also under assault. According to the 1880 Agreement, “The Southern Utes agree to remove to and settle upon the unoccupied agricultural lands on the La Plata River, in Colorado; and if there should not be a sufficiency of such lands on the La Plata River and in its vicinity in Colorado, then upon such other unoccupied agricultural lands as may be found on the La Plata River or in its vicinity in New Mexico.”⁷ For several years after 1880, Colorado Senator Henry Teller and his political minions attempted to pass legislation that would force the Southern Utes from their established agency to the La Plata area, deemed insufficient for agricultural purposes by Commissioner Manypenny after two separate surveys, or remove them from Colorado altogether. Finally, in 1885, Senator Teller introduced Senate Bill 769 which provided for the Utes to be removed from Colorado without specifying a destination. Another Colorado senator, Thomas M. Bowen, introduced Senate Bill 1916, which called for the Utes’ removal to San Juan County, Utah.

In a hearing before the Senate Committee on Indian Affairs on March 4, 1886, Buckskin Charley, Chief Ignacio, and Chief Tapuche all expressed the desire to move west. The Denver and Rio Grande Railroad had cut a swath through their tribal lands in 1881 and their reservation was being surrounded and constricted by cattle ranchers, miners, and settlers, making the Southern Utes virtual prisoners on a narrow strip of land. In 1887, the necessary number

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of Ute men signed a new agreement providing for their removal to Utah and the creation of a reservation there. The new reservation boundaries were similar to those proposed in Bowen's Senate Bill 1916. The signatures of 242 adult male tribal members of the three Southern Ute bands were required. By November of 1888, 274 signatures had been obtained.

Residents of San Juan County in Utah, including Mormon settlers and enormous cattle operations with interests in open grazing lands in the region, strenuously objected to the proposed reservation. One of their most effective arguments was that the new reservation would place the Ute People in sustained contact with non-Indians, thereby creating the same issues that already existed in Colorado. There was also concern that Ute sheep and Utah cattle sharing the same grazing lands would lead to conflict, while the lack of reliable irrigation water would inevitably lead to agricultural disaster for Ute farmers. Furthermore, several Mormon squatters would have to be forcibly removed, and the loss of grazing land that substantially benefited cattle companies could prove detrimental to the burgeoning cattle industry in the region. In the end, the bill to remove the Southern Utes from Colorado was defeated, probably owing in large part to the political lobbying power wielded by the Utah cattle barons. Ironically, on September 13, 1888, the *Rocky Mountain News* published the following article entitled "Why the Treaty Failed":

THE UTES UNDULY INFLUENCED BY WHITE MEN. CATTLE OWNERS SUSPECTED. ...

Special to The News.

Durango, Colo. Sept. 12.—The failure of the Ute commission to make a treaty with the Indians is due mainly to the influence exercised over the minds of the chiefs by designing white men who are opposed to the removal because it will interfere with their interests. Several large cattle owners are supposed to be using secret influence to retain the Utes, and the citizens of Durango are naturally indignant that a few men, for selfish and mercenary motives, should defeat the will of the people. The commissioners are well satisfied of the fact that their labors are hampered by these men, and are now at Pagosa Springs investigating the matter.

In a conversation held with a Durango Idea representative there, Colonel Weaver, a member of the commission from Arkansas, said: "The Indians are very stubborn, owing to the fact that they are influenced, no doubt, by designing men, through their chiefs, to stay, in the face of the fact that game is growing scarce here, and just a little while ago they wanted to go where it was more plenty. Now they will not even talk to us upon the subject. Out of this complications arise which the citizens of this section and at Durango could, if they were so disposed, aid us to fathom and possibly to set aside. You have up here in your

county a strong and influential combination with the Utes that no doubt desires to be bought. It is not our business here to trade with them, but to treat with the Utes. We have treated with them and treated them well, and still they are obstinate. The outlook, I must say, for a satisfactory understanding with them is gloomy in the extreme just now, still we will keep trying. We have not lost hope. We think the people of Colorado and of this section in particular might lend us more aid in this matter than they are doing. If they will approach us more freely we will suggest to them how they may do this. About this influence that keeps the Utes away from the councils that you call, we know the parties concerned here and will make this knowledge public when the time comes if it becomes necessary to do so.”

The Colorado Utes remained where the 1878 session of Congress and the Act of 1880 had forced them to settle, until, according to the Southern Ute Indian Tribe’s own website,

In 1895 the Hunter Act was passed opening up the Ute strip to homesteading and sale to non-Indians. The Utes residing on the small strip of reservation land north of the New Mexico state boundary and into the four corners area became divided. The Weenuchiu under the leadership of Chief Ignacio agreed that land could not be owned individually, but instead was owned in commonality by tribe. The Weenuchiu moved westward and settled on a dry arid piece of land now known as Towaoc. The Southern Utes (Mouache and Caputa bands) agreed to take land into ownership under the allotment process.⁸ Unfortunately many allotments were either sold to non-Indians or the tribe. Around the 1940s about 300 allotments were owned by Southern Ute Tribal heads of household. This number has dwindled considerably. (<https://www.southernute-nsn.gov/history/>)

In 1899, after the remaining land had been opened to white settlement, the final boundaries of the Southern Ute Reservation were established.

In Utah, the Uncompahgre Ute People were still enduring ongoing injustices. Between 1890 and 1894, other gilsonite mining interests introduced a series of seven bills in Congress proposing changes to the reservation boundaries in order to allow access to additional veins of the mineral. In August of 1894, a congressional act was passed that contained a stipulation that would allow the commencement of allotting lands to the Indians and opening the remainder of the reservation lands to settlement and mining. Furthermore, the Utes would be obliged to pay \$1.25 per acre for their allotments from the capital paid out from the sale of their lands in Colorado.⁹ When the Uncompahgre Utes refused to comply, Section 3 of the 1880 Agreement, pertaining to allotment of lands in severalty, again became the foundation of political maneuvering. To make matters worse, contained within an 1890 bill that proposed to alter the reser-

vation boundaries was an opinion, expressed by Acting Commissioner R.V. Belt, as follows:

While the Government may not be in duty bound to submit the question for the consent of the Indians, for the reason that the Uncompahgre Reservation was not intended to be set apart as a permanent reservation for the *Uncompahgres* (author's emphasis), but simply for the purpose of withholding from white settlement or occupation, or other appropriation, a sufficient quantity of land to make allotments to said Indians, as provided in the before-mentioned Ute agreement of 1880, and until such allotments should be made, and for the further purpose of defining the territorial jurisdiction of the Indian agent, which was found necessary in dealing with trespassers and intruders.¹⁰

Ultimately, no allotments were certified in 1894.

In 1897, another act was proposed that presented another plan for allotment that did not include the requirement that the Utes pay for their land parcels. It also specified that all unallotted lands would be open to "entry under all the land laws of the United States," but did not include any reference to public domain. It also did not provide monetary payment or any other compensation resulting from the dispersal of unallotted lands.¹¹ According to Fred A. Conetah in *A History of the Ute People*, federal authorities no longer even considered it obligatory to acquire the Ute People's consent, but merely relied upon the 1880 Agreement. In May of 1898, 83 allotments were created. Conetah states,

The protests of the People had gone unheeded. The allotments had been issued hastily. Little consideration was made of the wishes of the People as to whom they wanted for neighbors. Most of the Uncompahgre continued to live on the reservation. They refused to believe the land did not still belong to them. Ironically, very little of the land was claimed or entered by non-Utes. The land was not suitable for farming.¹²

In June of 1898, an act was passed that authorized the appointment of a commission to create allotments for the Uintah and White River Utes and the opening up of the remainder of the reservation for settlement and public domain. In November, a delegation of the two bands traveled to Washington, D.C. to protest any further loss of their lands. In May of 1902, Congress granted authority to the secretary of the Interior to allot lands to the Uintah and White River Ute Peoples.¹³ In January 1903, the U.S. Supreme Court ruled in *Lone Wolf v. Hitchcock* that Congress had the power to pass laws abrogating treaty stipulations. Congress could open reservation lands to settlement without Indian consent. Apparently emboldened by this ruling, in March of 1903, Congress passed an act to appropriate funds to carry out estab-

lishing the allotments specified in the 1902 Act. A further provision of the 1903 Act gave the secretary of the Interior the authority to create allotments without the consent of the Utes if they did not cooperate.

In 1903, Indian Inspector James McLaughlin (also called “White Hair” by the Sioux) met with the White River and Uintah Utes to secure their consent for accepting allotments and opening up unallotted lands on the reservation to white settlers.¹⁴ McLaughlin had previously been the agent at Standing Rock Agency in South Dakota. He had arranged to have his Indian police force supplied with kegs of whiskey before sending them to arrest and/or murder Sitting Bull in 1890. “White Hair” was a notorious advocate for the assimilation of Indian Peoples and the complete eradication of their traditional cultures, which led to his sustained enmity with Tatanka Iyotaka. He was an unlikely candidate to protect the rights of the Ute bands. According to the Wyoming Historical Society *Encyclopedia*, McLaughlin wrote in 1910, “If the Utes had been thoroughly chastised after the Meeker massacre in 1879, they would not be the irresponsible, shiftless and defiant people they are today.”¹⁵

McLaughlin was able to acquire 82 signatures out of 282 Ute men and it has been rumored that some signatories were bribed, while some were children.¹⁶ Despite not having the obligatory three-fourths of male signatures, government authorities were given permission to begin allotting lands. After a series of delays, a commission was appointed in 1905 to proceed with assigning allotments, which was accomplished despite the fact that many of the Ute People refused to participate in the process. Thousands of acres were allotted in less than two months, most of them being some of the most arid and unproductive on the reservation. Not surprisingly, the best acreage was reserved for future homesteading.¹⁷

Now relegated to small hardscrabble farms, many of the White River Utes were understandably angry and frustrated. They made ardent requests to be moved to another reservation of their own in Colorado and protested the loss of their land. In House Document 33 of the first session of the 58th Congress, White River leader Chief Happy Jack was recorded as stating,

After the white people come in here they will say, ‘We took your land, now we will take your water and your house. So you get off this land; go to other country and find some other place!’ This is the reason we feel bad over this business. The land where the white man’s towns are belonged to us as [*sic*] one time... You are just like a storm from the mountains when the flood is coming down the stream, and we can’t get help or stop it.¹⁸

Throughout the 1880s and the 1890s, groups of American Indians began visiting between western reservations. They were forging new friendships, connecting with old enemies, sharing stories, and exchanging cultural knowledge. In 1886, a large contingent of Lakota had visited with the people of the Uintah Reservation. They had established a bond of friendship.

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In 1890, Red Cloud had even sent a letter inviting some of the Utes to meet him for a visit on the Wind River Agency in Wyoming.

White Rocks, Utah

March 10 1890

Buckskin Charley

My friend

Enclosed you will find a letter that I have just got from Red Cloud. It will explain itself for I send it to you so that you can read it. I have written Red Cloud that I will go to the Shoshone Agency as he requests. I would like for you to come up here and go along with me when I go. Tell this to all of the Utes so that they will all know.

The Utes here are all well. We would like you to write and give us the news that is going on down to your place. We all shake hands with you.

Your friend

Marcisco

(Marcisco to Buckskin Charley, March 10, 1890, National Archives, RG 75.19.18, Decimal Files, Box 2)

Some of the White River Utes began to speak of forming an alliance with the Lakota People up north. A leader named Red Cap began to gather together discontented Ute tribal members at the 1906 Bear Dance. Red Cap and other leaders apparently believed that a coalition of tribes could force the U.S. government to listen to their demands. Eventually an assembly of around 400 people, mostly of the White River band, began to move northward from Utah. They traveled in traditional manner, on horseback with pony drags, taking their time and in no orderly fashion. Citizens of Utah and Wyoming kept track of their movements and newspapers printed incendiary articles.¹⁹ According to Fred Conetah,

Uintah and Ouray Agent C.G. Hall attempted to induce the Ute People to return to their former homes. They persisted in their journey... The governor of Wyoming was finally able to convince the federal government to send troops against them. When the army surrounded the People, they saw the hopelessness of their situation. After a council with the military, they agreed to be escorted to Fort Meade, South Dakota. There the People were dismayed to find that the Sioux were not only unwilling to enter into an alliance, but they had no hunting lands to share. In a state of bewilderment, the People were settled on a portion of the Cheyenne River Sioux Reservation. Some worked for the railroads, others

found jobs in Rapid City. In 1908 the Ute People were escorted back to Utah. This ‘anguished odyssey’ reinforced the breakdown of traditional political organizations. The leaders were defeated and discouraged. Their inability to control their destiny, to make decisions for their people in the face of white power and control was sorrowfully demonstrated. They remained in encampments as late as 1916 and maintained a ‘cold war’ hostility toward agency personnel.²⁰

LEGAL DISPUTES AND INJUSTICE: THE INDIAN CLAIMS COMMISSION

According to Thomas Luebben, who has practiced Native American law for over 50 years,

Although the jurisdictional mandate of the ICC appeared to provide a forum for a wide variety of tribal claims, the large majority of claims processed by the Commission were claims for compensation related to land. The underlying assumption—that the land itself would never be returned to its Indigenous owners—is not discussed in the reported Commission and court decisions, the legislative history of the Indian Claims Commission Act (‘ICC Act’) or the various amendments to extend the life of the Commission. The lack of commentary on this point masks its great significance.

Indigenous peoples’ identity, along with their psychological and economic wellbeing, is intimately connected to and highly dependent on the continued occupation of their ancestral homelands. In the words of an Alaska Native, ‘[o]ur culture comes from that land. That is how we define ourselves as people. That’s where we derive our identity.’ No Indigenous Peoples have ever willingly given up their ancestral homelands. Wars may be won or lost, natural disasters may strike, but the loss of the homeland itself is a catastrophe of the order of genocide. The fact that the ICC Act did not empower the Commission to order the return of any land under any circumstances, and may even have foreclosed otherwise viable quiet title actions, predetermined that the ‘justice’ provided to Native Americans would be far from satisfactory.

In creating the ICC, Congress had an agenda beyond simply providing long overdue justice for Native Americans. That objective was termination of special tribal political status and assimilation into the dominant culture—in short, cultural genocide. The unique fraternity of private and government attorneys who specialized respectively in representing Indian tribes and defending the United States in Commission proceedings seemingly shared a critical cultural and political assumption: that the tribes would soon be terminated and assimi-

lated, and therefore the actual recovery of lands unlawfully taken by the United States was pointless. This was despite the fact that, as a result of correctable survey errors, invalid conveyances, private trespasses and unextinguished aboriginal Indian title, hundreds of millions of acres outside of recognized reservation boundaries remained subject to tribal title in 1946.²¹

In the 1880 Agreement with the Utes, it was specified that “The Uncompahgre Utes agree to remove to and settle upon agricultural lands on Grand River, near the mouth of the Gunnison River, in Colorado, if a sufficient quantity of agricultural land shall be found there, if not then upon such other unoccupied agricultural lands as may be found in that vicinity and in the Territory of Utah.”²² When Otto Mears, one of the commissioners, decided that the arable and fertile land on the Grand River should be set aside for white settlers, he prevaricated and reported that the land was not viable. This forced the Uncompahgre People to be exiled to an arid reservation in Utah, divided between them and the Uintah and White River Tribes. It is astounding, therefore, that in the 1965 findings of Docket 349, the contention of the U.S. government is that “it had no obligation to furnish such a reservation.” Even more staggering is that the final judgement provided a mere \$300,000 as recompense for such an egregious miscarriage of justice and bureaucratic betrayal.

In Docket 327 (decided in 1962), the Confederated Bands of Ute Indians (that included all existing bands except the Uintah people) sought compensation for Royce Area 566, a region rich in mineral wealth and virtually stolen by mining interests. After much rambling self-justification, the commissioners dismissed the experts who testified on behalf of the Ute People and embraced the much reduced valuation of their own authorities. As such, rather than awarding the \$40,773,533 (that was probably the more accurate appraisal), the commissioners decided on compensation of \$8,500,000 and subtracted the \$507,662.84 that had been previously paid out for the land cession. Considering the vast wealth that was extracted from Royce 566 (also known as the San Juan Cession) over the years following the Brunot Agreement and to the present day, the amount awarded to the Ute People was grossly inadequate. In addition, the ICC judgement excluded compensation for the area of 10,240 acres known as “Uncompahgre Park.”

In the negotiations that led up to the 1873 Brunot Agreement and the San Juan Cession, Uncompahgre Park was specifically withheld and retained by the Utes. The park was especially important to the people and they made it plain to Felix Brunot and the other commissioners that they wanted it excluded. Being a valuable piece of land, whites began settling there in spite of the Agreement and a government surveyor deliberately included the area in the cession. Eventually, due to adamant protests from the Ute People, President Grant issued an executive order in 1876 that withdrew the park from public domain and returned it to the reservation. After the Utes were exiled from the state of Colorado, however, Congress succumbed to political pres-

sure and returned Uncompahgre Park to public domain by the Act of May 14, 1884. Because of the dishonorable dealings of U.S. authorities, the Indian Claims Commission decided that “since this area was not included in the cession, it is not involved in this action.” Once again, the mistakes and bad acts of non-Indians were inevitably perpetuated by the Commission, which clearly was not acting on behalf of Native Peoples.

In their dealings with the ICC in Docket 328, the Southern Ute Tribe requested “fair and just compensation for the approximately 220,495.17 acres unlawfully disposed of” by the U.S. government. Eventually, the number of acres involved, as noted in the ICC Finding of Fact in 1966, became a total of 230,547.44 acres (under the Act of February 20, 1895),

disposed of as free homesteads or soldiers’ additional homesteads, based upon the value of such lands as of the date of taking together with interest sufficient to contribute the present full equivalent of that value paid contemporaneously with the taking. The value of the land and the date of taking will be determined at a subsequent proceeding.

In May of 1966, the ICC commissioners issued a First Interlocutory Order, stating that the Southern Ute Tribe was entitled to just compensation for the 230,547.44 acres, as well as supplemental accounting by the Government regarding trust monies, and ordered that evidence be provided, by both plaintiff and defendant, of expenditures of the trust fund as challenged by the Ute People. Also in 1966, the commissioners rendered the opinion that, despite the argument of U.S. attorneys that there was a statute of limitations on such a claim, the federal government owed an accounting of the monies held in trust for the sale of the 230,547.44 acres and an additional 81,953.18 acres, dispersed by the U.S. government aside from the previously mentioned homesteads. They stated,

We are of the opinion that the allegation for a specific accounting which brought forth the accounting report and thereby revealed other and further apparent misuse of petitioner’s funds, is a sufficient basis for requiring a further and complete accounting from defendant with regard to those items questioned by petitioner.²³

After several challenges to the 1966 Finding, which contended that compensation for the specified 230,547.44 acres had been settled in the 1950 *Confederated Bands of Ute Indians v. United States* Decision, the ICC found in 1969 that Royce 617 (the acreage in dispute) was probably never intended to be included in the decision. This apparently had resulted from a clerical error and Dr. Charles Wilkinson, the attorney for the Ute Tribes, had stated that, “in our judgment the lands in 617 were taken under the Act of 1895 from the Southern Utes whereas the lands in 616 which were included in the stipulation were taken under the Act of

NARRATIVE OF UTE HISTORY POST-1881 TO PRESENT

1880 from the Confederated Utes.”²⁴ Unfortunately, as most of the documentation had been lost and all but one of the attorneys was dead, the commissioners (somewhat unconvincingly) concluded,

It was not the intention of Dr. Wilkinson to include Royce Area 617 at the time he signed the stipulation in Case 46640. There is no evidence as to the intention of the attorneys who signed the stipulation on behalf of the Government. The only inference that can be drawn as to their intention was the testimony of Dr. Wilkinson that at no time during the long period of negotiation did either he or the attorneys for the Government discuss the question of disposition of Royce Area 617.²⁵

In 1971, the U.S. Supreme Court walked through this door and, in spite of the fact that Royce 617 was never intended to be included in the Confederated Ute case, dismissed the Southern Ute claim with prejudice. The accounting issues were also dropped as part of this decision. Their reasoning included the following:

In 1874, the Utes approved the Brunot Cession of 3.7 million acres of the east-central portion of the reservation after valuable mineral deposits had been discovered there. 18 Stat. 36 (1874). The result of the cession was almost to sever the reservation, leaving the Southern Utes wedged between the southern boundary line of the Brunot Cession and the New Mexico border, at the southernmost part of the reservation on a strip of land 15 miles wide and 110 miles long. This strip, which includes the lands at issue here, is referred to by the parties as Royce Area 617.²⁶

The judges cited the Act of 1880 that included “all the lands not so allotted, the title to which is, by the said agreement of the confederated bands of the Ute Indians, and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States.”²⁷ Accordingly, it was decided that “The plain wording of the Act cedes to the United States all of the nonallotted acreage of the reservation, including that in the 15-mile strip (Royce Area 617) occupied by the Southern Utes.”²⁸ The final argument of the Supreme Court seems to be that because the Southern Utes had expected a new reservation in Utah and this was not approved by Congress, then their claim could not be upheld. “The Senate Report recommending passage of the Act of 1895... repeats, once again, the previously stated position of the Congress that, ‘[o]n March 6, 1880, [the Utes] ceded the whole of their reservation in Colorado to the United States, except such lands, if any, as might be allotted to them in severalty.’” As a result, the U.S. Supreme Court “therefore hold that the claim in this case is res judicata under the 1950 consent judgment enforcing the settlement

agreement ‘as to any land... ceded to defendant by the Act of June 15, 1880.’”²⁹

It also appears that the accounting discrepancies with trust monies associated with the Southern Ute Tribe’s claim were dismissed at the same time. This is interesting as the funds in the account derived not just from the sale of the 230,547.44 plus acres, but from other sources under the title, “Indian Moneys, Proceeds of Labor, Southern Ute Indians.” This particular sum, collected between 1892 and 1940, was \$19,124.22 and the Southern Ute Tribe contended that no interest had been paid on this amount until 1931. The tribe also challenged the use of their funds for the purchase of unspecified goods, buildings, and services for the agency. This claim, despite the statement that it would be investigated further, as expressed by the commissioners in 1966, seems to have disappeared with the 1971 Supreme Court decision.

On July 14, 1971, the cause of action in Docket 328 of the Indian Claims Commission was barred by the principle of *res judicata*.

LEGAL CASES

The various Ute Tribes have been engaged in completely justified legal battles with the state of Utah, Colorado, and the U.S. government for many years since the ICC was terminated. The cases are complex and have their foundation in history and injustice. They are too numerous and multifaceted to summarize in this report.

Below are several links to important legal cases involving the Ute Indian Tribes. A search of “Ute Tribe” in the Cornell Law School database (<https://www.law.cornell.edu/>) yields 1,760 results, of which the cases below are but a limited sample.

Summary of Water Rights Claims:

12-3-2021 Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dept. of Interior
<https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1760&context=plrlr>

Chapter 5 – Assessment of Current Tribal Water Use and Projected Future Water Development
December 2018 Ute Indian Tribe of the Uintah and Ouray Reservation
<https://www.usbr.gov/lc/region/programs/crbstudy/tws/docs/Ch.%205.1%20Ute%20Tribe%20Current-Future%20Water%20Use%2012-13-2018.pdf>

Robert Hagen, Petitioner v. Utah <https://www.law.cornell.edu/supct/html/92-6281.ZD.html>

Ute Indian Tribe of the Uintah and Ouray Indian Reservation, Plaintiff, v. United States of America, Defendant

<https://law.justia.com/cases/federal/district-courts/federal-claims/cofce/1:2018cv00357/36422/27/>

FINAL NOTE

According to Wex, the online “community-built, freely available legal dictionary and legal encyclopedia” of Cornell Law School’s Legal Information Institute (LII), the definition of “pain and suffering” is as follows:

Pain and suffering refers to the physical discomfort and emotional distress that are compensable as noneconomic damages. It refers to the pain, discomfort, anguish, inconvenience, and emotional trauma that accompanies an injury. ... [and in some jurisdictions can include] all items of nonpecuniary damages and includes the loss of enjoyment of life. Damages for the loss of enjoyment of life compensate for the frustration and anguish caused by the inability to participate in activities that once brought pleasure.³⁰

Black’s Law Dictionary online gives the following definition: “a term that is applied for the inability to lead a normal life due to mental and physical suffering.”³¹ Given the historical trauma, intergenerational trauma, economic losses, poverty, inadequate health care, centuries of injustice, rampant slaughter, rape, racism, benign and intentionally malignant neglect, and victimization by law enforcement agencies, it would seem that the American Indian People of Colorado have compelling grounds to sue the state for pain and suffering.

In 1885 and 1888, a Procter & Gamble ad used this offensive verbal imagery to advertise Ivory Soap:

We were once factious, fierce and wild,
 In peaceful arts unreconciled.
 Our blankets smeared with grease and stains
 From buffalo meat and settlers’ veins.
 Through summer’s dust and heat content
 From moon to moon unwashed we went.
 But IVORY SOAP came like a ray
 Of light across our darkened way.
 And now we’re civil, kind and good,
 And keep the laws as people should.
 We wear our linen, lawn and lace
 As well as folks with paler face.
 And now I take, where’er we go,
 This cake of IVORY SOAP to show
 What civilized my squaw and me,
 And made us clean and fair to see.³²

ENDNOTES

- 1 Conetah, F. A., 1982, A History of the Northern Ute People, UitaH-Ouray Ute Tribe, 117-118.
- 2 McPherson, R. S., & Hurst, W. B., 2002, The Fight at Soldier Crossing, 1884: Military Considerations in Canyon Country, Utah Historical Quarterly, 70(3).
- 3 Conetah, 1982, 118.
- 4 Dodie, 2022, Colorow and the Ute Aftermath, Denver Public Library.
- 5 Conetah, 1982, 118.
- 6 Waltmann, H. G., 1962, The Interior Department, War Department and Indian Policy, 1865-1887 [Dissertations, Theses, & Student Research], University of Nebraska-Lincoln Department of History, 364.
- 7 Agreement with the Confederated Bands of Ute, 1880, Tribal Treaties Database.
- 8 Southern Ute Indian Tribe, 2019, History – Southern Ute Indian Tribe, Southern Ute.
- 9 Jorjani, D. H., 2018, The Authority of the Secretary to Transfer Areas Within the Uncompahgre Reservation under Section 3 of the Indian Reorganization Act, U.S. Department of the Interior, 3.
- 10 H.R. Rep. No. 2967, 51st Cong., 1st Sess., To change the boundaries of the Uncompahgre Reservation, 1890, University of Oklahoma College of Law Digital Commons.
- 11 Conetah, 1982, 121.
- 12 Ibid., 122.
- 13 Ibid., 75.
- 14 Ibid., 125.
- 15 Rea, T., 2021, The Flight of the Utes, WYOHISTORY.ORG: A Project of the Wyoming Historical Society.
- 16 Conetah, 1982, 125.
- 17 Ibid., 126.
- 18 Ibid., 125.
- 19 Ibid., 126.
- 20 Ibid., 127.
- 21 Luebben, T. E., 2006, In The United States Indian Claims Commission: A Remedy for Ancient Wrongs, A Source of New Wrongs, New York: Oxford University Press.
- 22 Agreement with the Confederated Bands of Ute, 1880.
- 23 The United States v. Southern Ute Tribe or Band of Indians, 423 F. 2d 346, 1970, (U.S. Court of Claims March 20, 1970).
- 24 Indian Claims Commission Decisions, Volume 21, 1978, Native American Rights Fund, 272.
- 25 Ibid., 275.
- 26 United States v. Southern Ute Indians, 402 U.S. 159, (U.S. Supreme Court 1971).
- 27 Ibid.
- 28 Ibid.
- 29 Ibid.

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30 https://www.law.cornell.edu/wex/pain_and_suffering

31 <https://thelawdictionary.org/pain-and-suffering/>

32 https://commons.wikimedia.org/wiki/File:1888_Ivory_Soap_Advertisement.jpg

Ute Tribes

Truth, Restoration, and Education Commission (TREC) Recommendations

1. It is recommended that the State of Colorado compensate the Ute Tribes for pain and suffering (and mental distress) resulting from illegal trespass.¹
2. It is recommended that the State of Colorado compensate for insufficient remuneration to consolidated Ute tribes for mineral wealth extracted through illegal mining before the San Juan cession resulting from illegal trespass.²
3. It is recommended that the federal government compensate and restore all the water rights that they inherently owned as part of their Treaties in Colorado.³
4. It is recommended that the State of Colorado compensate the Uncompahgre Utes for its role in the forced removal of the Uncompahgre Utes to Utah.⁴
5. It is recommended that the State of Colorado restore rights to the Ute Nations for unrestricted cultural and traditional land use by all individual Ute people in Aboriginal territory on all public lands in Colorado (federal and state), including hunting and fishing rights and removal of plant materials.⁵
6. It is recommended that the State of Colorado provide monetary use compensation or complete restoration for all railroad easements in Colorado.⁶
7. It is recommended that the State of Colorado assist the Utes in securing compen-

sation for claims for economic restitution to Ute tribes and individual tribal members who are descendants of slaves in Colorado.⁷

8. It is recommended that the State legislature of Colorado add an addendum to the Great Outdoors Colorado legislation allowing the Ute Tribe and other Tribes that may be located within the external boundaries of the State of Colorado access to funding that is available to other counties, municipalities, and non-profits.⁸

9. It is recommended that the State of Colorado no longer assess property taxes on federally recognized enrolled Ute members.⁹

10. It is recommended that the State of Colorado support the Ute Nations in their quest to have the Indian Claims Commission's decisions governed by the Congress opened for appeal.¹⁰

11. It is recommended that the State of Colorado authorize all higher education institutions funded by state funds to provide all enrolled members of the Ute Nations tuition waivers, as well as room and board.¹¹

ENDNOTES

1 Beginning in 1834 with the Indian Trade and Non-Intercourse Act, invaders were prohibited from settling on American Indian Land in the west. The Ute land is partially located within the boundaries of the Act, and the intruders, invaders, squatters, and such moved into areas owned by the Ute Tribes. The devastation diminished the welfare of the Ute people. This violation was not corrected by any agency even when they knew the occupation was illegal.

2 The illegal mining destroyed the economic well-being of the Ute People. There has never been adequate compensation for these illegal activities. Almost every Treaty resulted in an inadequate settlement. Treaties were developed specifically to deprive the Utes of their mineral, oil, and gas reserves.

3 Water rights are inherent within Treaty rights and need not be stated. The federal government must fully recognize all the Ute Nations for their water rights. The standard must follow the criteria outlined in the Winters Doctrine.

4 The forced removal was based on specious claims of Indian Commissioners now proved false. The Territorial Governor and Acting Superintendent failed to correct the misperceptions, causing great hardship to the Utes.

5 Access to any locations that the Ute people used for ceremonial purposes, for collection of plants for medicinal purposes, and land for hunting buffalo are no longer available to the Ute people.

6 The State of Colorado's economy flourished when the railroads were the given land via the Railroad Act. At no time did the Ute people benefit from these land transfers.

7 The horrible fact that children were stolen by Lafayette Head, the Indian Agent for Colorado, who participated in the slave trading of children, must be acknowledged and compensation provided to cure the wrongdoings.

8 The current legislation does not allow for Tribal Nations to access GOCO resources that Tribes could use to protect sacred sites and acquire land to be put into easements for conservation or historical purposes.

9 The Ute people who live off the reservation have a reserved right to not pay state property taxes as they are still living within their homelands. The status of United States citizenship, when granted in 1924, protects Ute members with a protectorate clause.

10 In the reviews of the Indian Claims Commissions dockets 44 and 45, Dockets 327 and 328 there are significant issues with the process. The calculations to determine values were biased, and without a doubt the Bruno Agreement contained unscrupulous and dishonorable dealings on the part of the United States government.

11 The State of Colorado has a duty and moral responsibility to help the Ute People recover from the losses associated with the sordid history and treatment of American Indians in the past. All schools in the state benefit from land that belonged to American Indians. The School Fund received 4 million acres of land in Colorado to support schools and the Ute students have

not benefited from this resource. Every Ute child should receive an exceptional educational experience, complete with tutors and financial assistance to enhance achievement. It is also noted that Colorado State University received Ute land to help start the institution and still holds 19,000 acres of land as well as a healthy endowment. The Ute nations and their students have not seen any significant opportunities that increase their acceptance and success at CSU.

Fraud Report

Fraud in Indian Country

INTRODUCTION

The Doctrine of Discovery and the dogma of Manifest Destiny were the declarations of “euro-christian”¹ (i.e. European Christian) invaders who colonized what is now the United States. Those who followed these principles believed that it was their “god-given” right to seize lands occupied by Indigenous peoples. These doctrines are fancy words for the greed and racism that sanctioned the theft of lands of the Indigenous peoples. This euro-christian worldview subsequently led to the genocide of Indian peoples. As the invaders moved west, treaties made with Indian peoples were pieces of paper that could be and were violated routinely. In addition to the treaties, Congress passed laws that regulated trade and professed to protect Indian lands and the peoples who lived there, while doing nothing of the kind.

The Department of the Interior and the Office of Indian Affairs were notoriously corrupt, their offices staffed using the political spoils system. Little thought was given to the qualifications of the people hired to administer treaties, or to crafting beneficial legislation pertaining to Native lands and peoples. The money made available to the Office of Indian Affairs attracted many people who were looking to make money quickly, some of whom had not been successful in their prior business endeavors. The secretaries of the interior and the commissioners of Indian Affairs generally knew little about Indian societies and their political organization. They ignored the ways of Indian societies and refused to learn about them. Indian people were considered less than human. Indian agents sent into the field to administer the treaties and legislation were generally ignorant about the people they were to serve. Sometimes these agents were military officers; some came through the recommendations of various Christian church organizations.

Fraud within all levels of the Indian Service was common. The broadest definition of fraud is used in this report. The definitions used are (from various sources on the web): “asset misappropriation”; “bribery”; “corruption”; and “wrongful or criminal deception intended to result in personal or financial gain”; also, from the Merriam-Webster Dictionary, “cheating”; “swindling”; and “trickery.”²

THE INDIAN INTERCOURSE ACT OF 1834

The Indian Intercourse Act of 1834 stated the following:

That all the part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and also that part of the United States east of the Mississippi river, and not within any state to which Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be Indian country.

Colonial invaders were not permitted on these lands and the federal government was tasked with keeping them out. However, there was little will and virtually no government resources to enforce this act. As a result, fur trappers looking for income came to the part of Indian Country which is now Colorado. Under the 1834 act, the taking of furs was illegal. Only animals used for food for individuals could legally be killed. Despite this, fur taking nonetheless commenced and became a thriving money-making activity. Later, when the fur market waned, buffalo robes and hides became the main items of trade. William Bent, a licensed trader and his partner, Ceran St. Vrain, were significant players in the fur and buffalo hide markets.

THE INDIAN INTERCOURSE ACT AND THE 1851 FORT LARAMIE TREATY (HORSE CREEK TREATY)

By 1851, the 1834 Indian Intercourse Act was being violated regularly by white invaders who came in increasing numbers. As a result of the incursions, conflicts arose between the intruders and those whose homelands were being inundated. The invasions caused environmental degradation and loss of game, upon which the Native peoples depended for their sustenance. In an attempt to prevent strife, a treaty council was called at Fort Laramie in what is present-day Wyoming. Because of the number of tribes who came to the council, the location was moved to Horse Creek, where there was more water and forage for the horses.

As with nearly all the treaties between the U.S. government and Indians, the treaty was drafted in Washington, D.C. and taken to the treaty council. This treaty asserted the right of the government to build roads, military posts, and post offices in Indian Country. The building

of military posts was a source of friction between the government and Indigenous peoples, which eventually caused the abandonment of some posts. The treaty also established defined territories for each of the Indian nations, thus negating the concept of territorial sovereignty for Native peoples. This provision was purportedly inserted to reduce the conflict between the various Indian nations.



Father De Smet's 1851 Treaty map, by Pierre-Jean De Smet, *Map of the upper Great Plains and Rocky Mountains region*, Library of Congress, 1851 (<https://www.loc.gov/resource/g4050.ct000883/?r=-0.285,-0.058,1.556,0.744,0>).

Following the signing of the Horse Creek Treaty, the U.S. government claimed fort building was necessary to protect those who would now be allowed to traverse Indian Country. The treaty required an end to hostilities against those traveling through Indian Country. Outsiders were allowed to go through Indian Country, but not to stop and build settlements. If the invading migrants were attacked and property was taken or destroyed, the Indians would be required to make restitution for any depredations. There was no language in the treaty for restitution to the Indians for any taking of game and timber, or for the degradation of the grasslands which were essential to the buffalo and to Indigenous peoples, whose livelihoods depended on the buffalo. The U.S. government in its turn promised to protect the Indian inhabitants against those who crossed their lands. This promise of protection was made in subsequent treaties as well, but it was rarely if ever kept or enforced. In the case of conflicts between intruders and the Native inhabitants, the Indians were nearly always assumed to be the perpetrators of hostile acts. This racist attitude allowed the Indians to be blamed and collectively punished for hostile acts without appropriate investigation.

The treaty in its original form provided for payment of \$50,000 per year for 50 years in exchange for allowing encroaching colonists to traverse the land. The treaty was amended in the U.S. Senate to provide payment for only 10 years instead of 50. The signature process for this treaty was fraudulent. The government representatives simply picked signers from among the various Native American Nations. These signers were generally those who were most agreeable to the treaty process, which ignored the political structures within the Indian societies. The most notable of these was the Cheyenne nation, where there was a formalized decision-making process through the Council of 44. Only a handful of Cheyenne signed the treaty. The signatures on the amendment also did not match the original signers in all cases.

The 1851 Treaty was a gross miscarriage of justice. It allowed intruders to cross Indian lands, some of which had already been degraded. In his letters to George E. Hyde, George Bent said that the grass, wood, and game along the Oregon Trail had been destroyed by 1849. The migrants then started using the route along the Arkansas River. In one season, this new onslaught decimated the cottonwood groves where the Cheyenne and Arapaho had camped in the winter for generations. The grass was demolished by the herds the whites brought with them; the herds of buffalo began to diminish.³ Much of this migration and destruction, which happened before the 1851 treaty was negotiated and drafted, was a violation of the 1834 Indian Intercourse Act.

THE COLORADO GOLD RUSH AND THE FOUNDING OF FRONT RANGE TOWNS: 1858 TO 1859

Gold was discovered in Colorado in 1858, instigating illegal settlement in what were the Nebraska and Kansas Territories. By 1859, over 100,000 prospective miners had overrun the territory of the Cheyenne and Arapaho. James W. Denver, governor of Kansas, authorized a group of prospectors to establish Arapahoe County as a part of Kansas.⁴ The Kansas territorial governor used the Organic Act to establish Arapahoe County, which was an enlargement of the territory into what is now Colorado.⁵ This was illegal under the Indian Intercourse Act of 1834. The mining towns that were established in 1858 and 1859 were a violation of both the 1834 Indian Intercourse Act and the 1851 Fort Laramie Treaty. Violators of the 1834 Act were subject to removal by the military, but westward moving emigrants did not take this provision, which the military rarely enforced, seriously.⁶

The major towns established on the front range were Denver, Boulder, and Colorado City (now Colorado Springs). Under the 1851 treaty this land belonged to the Cheyenne and Arapaho.



Kansas-Nebraska Map, 1854, courtesy of Media Storehouse, n.d. (<https://www.mediastorehouse.com/granger-art-on-demand/american-history/kansas-nebraska-map-1854-map-united-states-12225795.html>).

Denver was founded as a mining town in 1858 on Indian land. The original name was the Montana Land Company. John Simpson Smith and William McGaa were part of the organizing group. It was thought that since they both had Indian wives, they would be useful in negotiating with the Cheyenne and Arapaho. Even with Smith and McGaa, the land titles were not valid.⁷ Land speculation was common, even though the land being sold was stolen land that did not legally have clear title. As part of the land speculation schemes, four log houses were laid out by a group of people in order to claim lots. These four log “houses” were merely four logs laid out in a square. The would-be landowners then asserted these “structures” allowed them to claim a piece of land. This four-log house scheme allowed one person to claim many lots without the expense of actually building anything. The practice was eventually outlawed.⁸ Denver did not legally belong to the invading white immigrants until after 1864, when a congressional grant was made. It allowed those residing on lots with improvements to purchase the lots for \$1.25 per acre. Governor John Evans acquired land in this way.



Denver's Boundaries, under Act of March, 1864.

Denver's Boundaries, Under Act of March, 1864, n.d., History Colorado Center.

Boulder was chartered in Nebraska Territory in 1859. Prospectors from Nebraska arrived at Boulder Creek after finding gold. They made their settlement permanent, which broke their promise to Niwot (Left Hand) and his band of Southern Arapaho that their settlement would only be temporary. In addition to the broken promise to Niwot, there are reports that the miners raped Arapaho women. There were 60 prospectors who established the Boulder City Town Company. They had the land surveyed and divided the acreage along Boulder Creek into 4,044 lots priced at \$1,000 each. The surveys were illegal under the 1834 Indian Intercourse Act. There were some who owned more than one lot and the ownership ledger of transactions shows many sales over a period of about two years, a sign of speculation. There was even one owner who lived in Kansas and never occupied his lot.⁹

Old Colorado City was established in the Pikes Peak region in 1859. The town's original name was El Dorado. It was the first permanent town in the Pikes Peak region, established as a supply hub for the gold mines in the mountains to the west. Old Colorado City was the first territorial capital in Colorado. Old Colorado City was home to saloons and brothels whose customers were miners who came in for supplies. It was especially popular after the founding of Colorado Springs as a dry town. Old Colorado City was annexed by Colorado Springs in 1917.¹⁰

Even though under the provisions of various later treaties the Cheyenne and Arapaho ceded their land in the Pikes Peak region, this did not give title to the town companies. Although the squatters continued to occupy their lots, it was not until Congress passed the law of May 28, 1864 "for the relief of the citizens of Denver" that the defective titles were made good.¹¹

THE UPPER ARKANSAS AGENCY – 1855 TO 1860

The Upper Arkansas Agency was established in 1855 at Bent's New Fort. The fort was owned by William Bent, a long-time Indian trader. He was married to a Cheyenne woman named Owl Woman and was adopted into the Cheyenne tribe. Between 1855 and 1861 all the agents stayed at Bent's New Fort. Bent was the Indian agent from 1859 to 1860 while still maintaining his trading business. While Bent was agent, he spent most of his time at his home in Westport, Missouri (present-day Kansas City). Albert G. Boone, the grandson of Daniel Boone, was the agent from 1860 to 1861, and was one of the commissioners for the signing of the 1861 Fort Wise Treaty.¹²

In 1858, the Cheyenne and Arapaho passed laws within their tribal governments to accept farming as a new way of life. They were ignored by the government. Left Hand of the Arapaho traveled as far east as Council Bluffs, Iowa to evaluate the possibility of farming for the Arapaho. He worked on farms along the journey. Based upon his experiences, Left Hand concluded that farming was not suitable for the Arapaho. Ranching, however, would be a better way of life for them because it was more like the life they had been living. Left Hand's conclusions

also were ignored by the government.¹³ In the summer of 1859, Horace Greeley interviewed Left Hand. Greeley opined that a farm of 200 acres be made for the Arapaho. Left Hand said the idea was unworkable and patronizing. Greeley attributed Left Hand's position to a defect in the "savage character."¹⁴ Greeley's proposal undermined the work of Indigenous leaders like Left Hand and Little Raven. Agents Thomas S. Twiss and William Bent had been working toward a resolution that would create peace and security for the Indians, who were surrounded by the illegally infringing white population. Bent wrote in his report, "there is a smothered passion for revenge among the Indians, perpetually fomented by the failure of food, the encircling encroachments of the white population, and the exasperating sense of decay with which they are surrounded." The government ignored the opinions and efforts of Bent, Twiss, Left Hand, and Little Raven. Because of the government's failure to listen and respond, the chiefs' prestige was undermined. Their prestige was the best way for them to keep the young men from committing depredations.¹⁵



Photograph of William Bent, courtesy of *Wikipedia*, n.d. (https://en.wikipedia.org/wiki/File:William_Bent.png).

In 1860 Commissioner of Indian Affairs Alfred B. Greenwood attempted to make a treaty with the Southern Cheyenne and Arapaho. He failed in his effort. Before leaving Washington, he had prevailed upon his personal physician, F.B. Culver, to accompany him. When Greenwood returned to Washington after the failed treaty attempt, he left Culver at Bent's fort to take charge of the annuity goods that had been brought for the treaty making. When Culver arrived at Bent's Fort, he found that the 1859 annuity goods had not yet been distributed. It is likely that the goods had arrived while Bent was away in Westport.¹⁶

In 1860, trapper and hunter Lew Cassil was told that white trespassers could not hunt west of a line that crossed the Solomon River, north and south, near the mouth of Pipe Creek in Cloud County; then down to the Republican River; then northeast to the mouth of the Big Sandy Creek in Nebraska. Cassil said he would trap wherever he pleased. After trapping for approximately six years illegally, he was killed in the fall of 1866 on Little Cheyenne Creek.¹⁷ This was before Colorado Territory was established; what became Colorado Territory was still part of Nebraska and Kansas.

1861 AND THE FORT WISE TREATY

The government desired to make a peace treaty with the Southern Cheyenne and Arapaho because of the unsettled situation in the vicinity of Big Timbers. Big Timbers was an extensive riparian area along the Arkansas River. It is said that the riparian area may have been more than sixty miles in length. There were many traders and white immigrants who were being attacked. One of the reasons for these attacks could have been that the timber and buffalo in the area were being destroyed. White settlers traveling through cut the timber, which consisted of large cottonwood trees. Big Timbers was a favorite wintering place for the Southern Cheyenne and Arapaho because of its relatively mild climate. With the timber being cut, the natural protection provided by the trees would have been degraded.¹⁸

During this time of several attempts at treaty making, William Gilpin was the territorial governor. Gilpin sent a letter to Washington saying he did not think the 1834 Trade and Intercourse Act applied to the Great Plains. He said enforcement of existing laws “leads point blank to expensive and bloody wars, to the destruction of property, to the massacre of the innocent and the escape of the guilty.”¹⁹ Gilpin’s opinion was wrong. The 1834 Trade and Intercourse Act was exactly applicable to the Great Plains. The wars, destruction, and massacres were caused by the illegal encroachment of white invaders and the government’s failure to enforce the law.



Photograph of Black Kettle, courtesy of Denver Public Library, n.d. (<https://history.denverlibrary.org/colorado-biographies/black-kettle-1807-1868>).

In late 1860 Albert G. Boone, grandson of Daniel Boone, was appointed agent of the Upper Arkansas Agency. He arrived at Bent’s New Fort in February of 1861.²⁰ By this time Culver had managed to assemble the Southern Cheyenne and Arapaho for a treaty council. Boone

and Culver were the commissioners empowered by the government to treat with the Southern Cheyenne and Arapaho, and the Fort Wise Treaty was completed that same month.

Despite being concluded in February of 1861, the Fort Wise Treaty was not ratified until August 1861. The Senate, in executive session, deleted Article XI, which would have given land to Denver and surrounding communities for \$1.25 per acre. Article XI was deleted because it likely violated the 1834 Indian Intercourse Act, which did not allow land transactions between Indian nations and private citizens. The amendment to the treaty was sent back for signatures of the Cheyenne and Arapaho, who allegedly signed the amended treaty on October 29, 1861. If one studies the manner of the signatures, specifically the "X" markings, they are done as crosses in a bold hand, which is a rare manner of marking. Many of the Cheyenne chiefs did not sign the treaty, and some of those who did sign repudiated the treaty and said they did not understand it. One of the most prominent chiefs to sign was Black Kettle of the Southern Cheyenne.

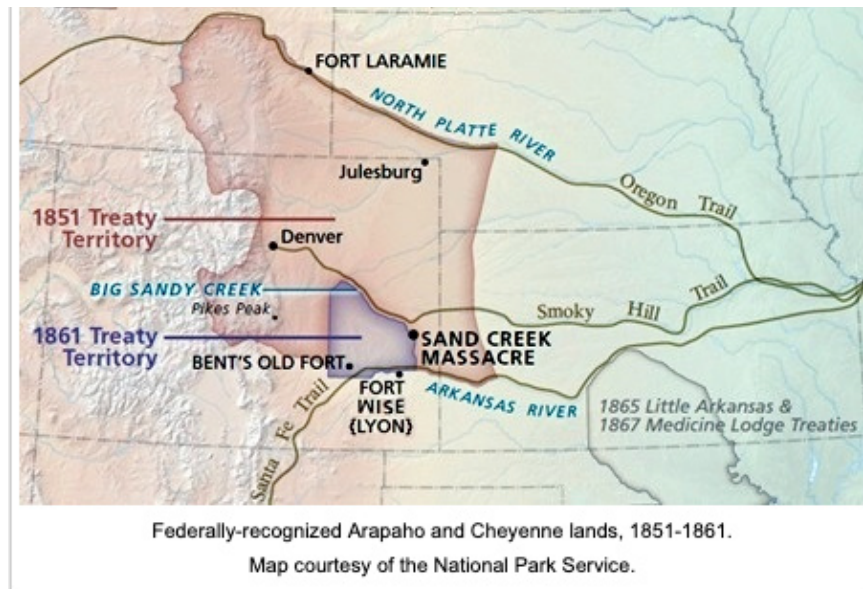
Though the Northern Cheyenne and Arapaho bands supposedly ceded lands granted to them under the 1851 Fort Laramie Treaty through the provisions of the new 1861 Fort Wise Treaty, the Northern Cheyenne and Arapaho never did actually sign the Fort Wise Treaty.²¹ The treaty was not approved by the Cheyenne Council of 44. Governor Evans testified before the Doolittle Committee on the Condition of the Indians that the Cheyenne Dog Soldiers refused to sign agreements.²² Neither the Northern Cheyenne nor the majority of the Southern Cheyenne recognized the treaty since it did not adhere to Cheyenne law and custom. Left Hand said that any treaty without his consent was not binding.²³

Despite not having the signatures of the Northern Cheyenne and Arapaho, the U.S. nevertheless considered that their lands were ceded under the 1861 Fort Wise Treaty, which left the Cheyenne and Arapaho with a small fraction of the land they once had. They never occupied the reservation described by the treaty. It had no game and therefore no means of subsistence.

The Fort Wise Treaty abolished land held in common and provided for individual holdings in severalty. The treaty stipulated 40 acres per person without regard to sex or age. The land given to each person was to have timber and water as far as was practical. Water rights on the reservation were to be held in common by the tribes. Parcels held in severalty were to be assigned in a manner that they would occupy a compact space. Any lands left over were designated as intermediate parcels and held in commonality by the tribes. The treaty also specified land for the agency residence and schools.

The aim of the treaty was to transform societies of people accustomed to ranging on large expanses of homelands, mostly following the buffalo herds, into settled agrarian ones. Culturally, this plan was inappropriate. The men of the tribes did not engage in physical labor as defined by euro-christian dictates. The colonizers failed to recognize the cultural differences that existed between European American and Indigenous peoples. Their arrogance in not acknowledging or validating those societal differences caused the failure of this treaty. Most

of the men of the tribes were not culturally disposed to become farmers. The reservation was never occupied, and the government did not fulfill its obligations under the treaty to set up infrastructure including housing, irrigation, and schools.



Federally-recognized Cheyenne and Arapaho lands from 1851-1861, National Park Service, n.d.-b. (<https://www.nps.gov/sand/learn/news/a-tale-of-two-treaties.htm>).



Portrait of John Evans (1814-1897), second territorial governor of the Colorado Territory, by C.H. Wells, ca. 1885-1889, courtesy of History Colorado Center.

Article 6 of the treaty specified that all tribal members were to come in within one year of the treaty signing date. The treaty was never signed by the by the required number of chiefs and headmen. In 1863, Commissioner of Indian Affairs William P. Dole wrote a letter to Governor John Evans saying that additional signatures were needed. There is no record of any signatures after 1861.²⁴

In the fall of 1861, Big Mouth led a band of Arapaho in the plunder of a Mexican wagon train west of Fort Larned. Boone reminded the authorities that had pushed for the implementation of the Fort Wise treaty that they needed to help prevent raids.²⁵ In April of 1862, recently appointed Indian Agent Samuel Colley advised Gilpin that the way to prevent trouble was to “place the Indians above actual want. Remove them from the necessity of theft—we cannot successfully preach peace and patience to a starving savage.”²⁶ Colley’s protestations would prove to be hollow because of his own corruption and theft of Indian annuities.

1862: THE PACE OF FRAUD ACCELERATES IN COLORADO TERRITORY

In 1862, John Evans was appointed territorial governor. He was a long-time supporter and friend of President Lincoln. He knew Lincoln through his participation in Lincoln’s campaign in Illinois. Evans was primarily a businessman. He accepted the governorship because he saw Colorado Territory as a place both to develop commerce, and which suited his business interests—particularly railroads.

As governor, Evans was also *ex officio* superintendent of Indian Affairs. Evans knew nothing about Indians. He wanted them removed from Colorado because he saw them as a hindrance to the development of commerce.²⁷

This same year Samuel Colley, a cousin of Commissioner of Indian Affairs William Dole, was appointed Indian agent to the Upper Arkansas Agency because Dole preferred to appoint relatives and friends to posts within the Indian Service. This was part and parcel of an already tainted system, where men were appointed to governmental Indian Affairs (and probably other) positions through the corrupt political spoils system. These men knew little about Indians, and Colley fit the mold. When Samuel Colley came to Colorado Territory his son, Dexter Colley, accompanied his father. Dexter brought a small herd of cattle with him and established himself as a trader.²⁸

During Colley’s tenure as agent, reports of fraud and self-dealing were common. It was widely known and reported that when annuity goods for the Indians came to the agency, Colley would, rather than distribute them, instead give much of what he received for the Indians to his son Dexter and Dexter’s partner, John Smith. Dexter and Smith then *traded* the annuity goods to the Indians. Keep in mind the annuity items Samuel Colley received were goods that should have been *freely given* to the Indians. John Smith was also known as “Lying John Smith.” There are reports that Colley and Smith loaded wagons with Indian annuity goods and transported them to Denver for sale there. Their fraudulent behavior was so blatant that *Rocky Mountain News* publisher William Byers even published a story about the pilfering of Indian goods.²⁹ Since Byers was an Evans ally, it is likely Evans knew of these crooked activities,

but he did nothing to stop the illegal practices. It was estimated that Dexter made \$25,000 to \$35,000 during his father's tenure as Indian agent.³⁰ This would have been a substantial sum in the early 1860s. John Loree, agent of the Platte Agency, was also corrupt in his appointment of traders. He appointed his friends and refused to renew the licenses of the established traders.³¹

The *Rocky Mountain News* reported in the Spring of 1862 that Spotted Wolf's band of 12 Arapaho lodges, who were starving and without provisions because they had not received expected annuities, were stranded near Denver. They said they would leave if they could get ammunition to defend themselves against the Utes and procure food. The *Rocky Mountain News* requested that Denver citizens assist the Arapaho. This lack of annuities for Spotted Wolf's band likely occurred because they were distributed at Fort Larned in Kansas instead of on the Arkansas River as was usual.³² Since the Arapaho were in a destitute condition, they likely did not have the means to travel to Fort Larned. During this same period John J. Saville, surgeon of the Second Cavalry Volunteers, wrote a letter to the Bureau of Indian Affairs. Copies were also sent to Evans and Colley. Saville, who had gained the confidence of the Arapaho and Cheyenne, recounted the bad treatment the Arapaho and Cheyenne had received during the creation of the 1861 Fort Wise Treaty. Left Hand had also informed Saville that Dexter Colley and John Smith had lied to the Arapaho and failed to keep promises they had made. Neva wanted Evans to know that the Arapaho disliked "Lying John" Smith. He said they would not believe anything Smith said and refused to have him as their interpreter. They wanted William Bent instead. Despite the complaints against Smith, Evans appointed him as interpreter anyway.³³

In 1862, a survey of the 1861 Fort Wise Treaty reservation was ordered. That same year John P. Usher was appointed secretary of the interior. Usher hired his friend Judge John W. Wright as surveyor for the reservation. This appointment was irregular as no input from the Indian Office had been requested. Prior to Wright's appointment, he had had little success in the private sector business world and had approached Usher about the surveyor position. Wright had no credentials as a surveyor and had to hire a subcontractor to perform the survey. Because Evans was not notified about the appointment by the time Wright arrived in Colorado Territory, he refused to assist Wright. The lack of notification was blamed on the weather, which had slowed the mail service. This lack of notification caused hostility from Evans, and Wright felt insulted. Evans eventually had to apologize for his behavior toward Wright. The survey itself was delayed because the 1861 treaty had not been widely accepted and it was unknown how many people would be residing on the reservation. When Wright [finally] completed his survey of the reservation, it was so badly done that another survey had to be performed. None of the Cheyenne or Arapaho moved to the reservation because there was no game there.³⁴

In midsummer, Evans submitted a proposal to the territorial legislature. This proposal's aim was to extinguish land claims of the Utes, Comanche, Kiowa, and Plains Apache. The

proposal did not include the Cheyenne and Arapaho because Evans believed, despite legal opinions to the contrary, that the Fort Wise Treaty provided the means to remove them to the reserve at Sand Creek.³⁵ Since Evans did not understand the treaty provisions of Article VI, he did not work toward the December 6, 1862, deadline for obtaining assent from non-signatory bands, deeming this task unimportant.³⁶ Article VI specifically refers to the Upper Arkansas bands. Since all the bands of the Upper Arkansas did not sign, it can be argued that the Northern Cheyenne and Arapaho were not included in the Article VI wording. Given this interpretation, Evans's proposal was flawed for the purposes of extinguishing all Indian title in Colorado.

In early July, after a peaceful spring, there were reports of Indian raids along the Platte River. The reports, after investigation, proved to be false. They had been fabricated by settlers who hoped their stories would lead to the removal of Indians from land which the settlers had stolen. Evans accompanied a detachment sent to the area under then Colonel (and later Indian Agent) Jesse H. Leavenworth. They met with the Indians, and after seeing firsthand that the reports had been false, convinced the Indians to leave until the situation became calmer.³⁷ This false reporting by white squatters was dangerous for Indian people. The 1862 Commissioner of Indian Affairs Report said the following regarding the treatment of Indians:

If a white man does them injury, redress is often beyond their reach; or if obtained, is only had after delays and vexations which are themselves cruel injustice. If one of their number commits a crime, punishment is sure and swift, and often times visited upon the whole tribe.³⁸

On July 1, 1862, the Pacific Railway Act became law. One of Evans's prime motivations for being governor was to secure a Colorado route for the transcontinental railway. The act provided for extinguishing Indian land rights. It included provisions for a 200-foot right-of-way through Colorado as well as through other new territories. The government also promised 6,400 acres of land adjacent to the track for each mile of track laid. This amount of land equated to ten square miles of land for each mile of track. Representative Samuel R. Curtis of Iowa, who later resigned his seat in Congress (and who eventually became a Major General in the army) was the primary author of the act.³⁹ This legislation was one-sided and gave little if any thought to the land rights of Indian people.

1863: CONDITIONS DETERIORATE

In the summer of 1863, Evans contacted Agent Loree and asked permission of Commissioner Dole to set up a council with the Indians who had not signed the 1861 treaty. Permission was granted.⁴⁰ In 1863 Elbridge Gerry, a long-time trader well-known to the Cheyenne and Arapaho, was appointed as special agent. He was to meet with the Cheyenne and Arapaho

to set up a council for obtaining additional signatures of chiefs who had not previously signed the Fort Wise Treaty. Some said they would not sign until all the bands for the north and south came together for a council to decide about the signing.⁴¹ This council would have been in keeping with the Cheyenne Council of 44 protocols. Some of the bands called the treaty a swindle. Some said their children were too ill to travel, and their ponies were in too poor a condition for traveling.⁴² The killing of an Indian by a soldier added to the tensions and problems of obtaining signatures. The gathering of a council therefore never happened.

Because of the information he received about the Sioux coming down asking for alliance with the Northern Cheyenne and Arapaho, Evans thought they might join the Sioux in waging war against white settlers in Colorado Territory. The Northern Cheyenne and Arapaho said they refused the war pipe. They still had good buffalo hunting on the Smoky Hill and Republican Rivers. It was the Southern Cheyenne and Arapaho, existing in poorer conditions, who could be the larger threat.⁴³

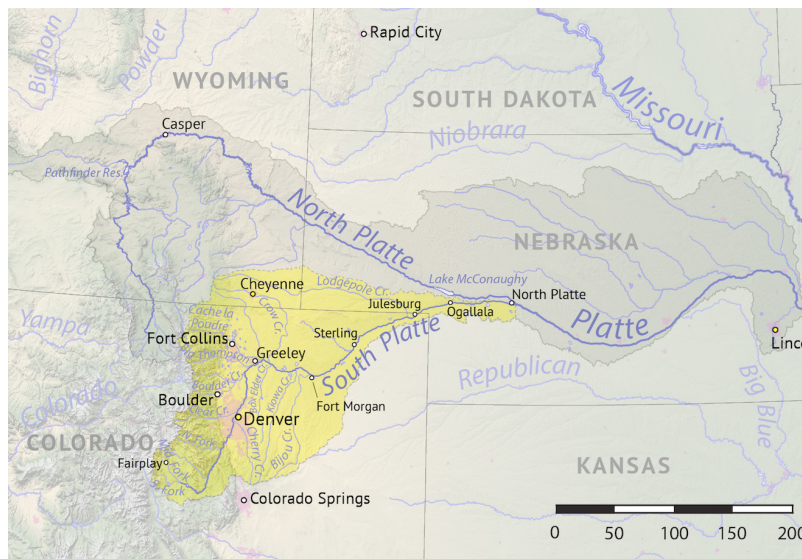
1863 was known as the “year of hunger.”⁴⁴ Even the most peaceful of the Arkansas Indians were in a state of desperation. Both Samuel Colley and Major Scott Anthony at Fort Lyon saw that the Indians were impoverished. Anthony thought the government would be forced to subsidize the Indian people or let them starve to death. He thought that starvation “would probably be the easier way of disposing of them.”⁴⁵

The Caddos, a tribe from Texas, arrived in Colorado Territory in 1863. They left Texas with their families, cattle herds, and seeds to escape the Confederate soldiers. They traveled at night and hid during the day. Before coming to Colorado Territory, the Caddos had arrived at Fort Larned in Kansas. There they lost their cattle herds to white thieves and other hungry tribes camped around Fort Larned. The Caddos were sent from Fort Larned to Colorado Territory. The loss of their cattle and their long journey caused them to arrive in a destitute condition. To aid the Caddos, Charles Mix, acting commissioner of Indian Affairs, appointed Judge Wright as a special agent. Wright was given \$4,000 to aid the Caddos, and in addition received five dollars a day plus expenses. A year later, the Caddos were still destitute.⁴⁶

In 1863, aggression against those invading Colorado Territory increased. Samuel Colley reported that the increase in depredations was caused by starvation. He said there were no buffalo within 200 miles of the reservation.⁴⁷ The starvation also can be partially attributed to Colley’s unscrupulous transfer of annuity goods to his son. The Indians had been in a starving condition for 10 years, especially during the winter.⁴⁸ The encroachment of white invaders had caused the depletion of game upon which Indigenous peoples depended. Because there were few cattle on the front range at the time, the trespassers helped themselves to game. Some game was certainly frightened away. Depredations on the part of Indians usually involved the theft of stock. In his September 3, 1863 report, Colley says the Indians are generally friendly. He also says in this report that there is a lack of buffalo and game generally near the reservation.⁴⁹

Since construction of improvements on the Fort Wise Treaty reservation had not yet begun, Acting Commissioner of Indian Affairs Mix instructed Agent Colley to begin construction for the benefit of the Cheyenne and Arapaho. The only completed construction was erecting the agency buildings and digging an irrigation canal. Crops were planted at the agency, but there was no benefit to the Cheyenne and Arapaho from these limited improvements. No land was allotted for houses to be built. No mill or blacksmith shops were constructed. No agricultural equipment was purchased.

Evans ordered Agent Colley to take a delegation of Kiowa, Comanche, Plains Apache, Cheyenne, and Arapaho chiefs to Washington to negotiate a treaty with Dole. The Cheyenne and Arapaho delegation included minor chiefs and headmen. Left Hand of the Arapaho was told about the trip, but before he could make his way to Fort Lyon, the delegation had left without him. Little Raven was angered by Left Hand's exclusion and refused to go.⁵⁰ It may have been that Left Hand was not wanted in the delegation because he spoke fluent English, and trickery would have been made more difficult with him there.⁵¹ It was also feared that Left Hand would expose Colley's and Smith's swindling of the Indians.⁵²



Map of the North Platte River Drainage Basin, by Shannon1, courtesy of Wikipedia, n.d. (https://en.wikipedia.org/wiki/North_Platte_River#/media/File:North_Platte_basin_map.png).

While Colley was in Washington, Evans became more aggressive in his actions to remove the Indians from Colorado. Because of Evans's actions, the federal courts were forced to interpret the 1861 Fort Wise Treaty. The court found no basis for the claims the Cheyenne and Arapaho had ceded any land north of the South Platte River. In December of 1862, U.S. District Attorney for Colorado Territory S.E. Browne pointed out to Interior Secretary Dole that the 1861 treaty had failed to define the boundaries of ceded land.⁵³ The following map shows Fort Collins, Greeley, Julesburg, Boulder, and some parts of current-day Denver are

located on unceded treaty land. In early 1863, Browne requested “explicit information” about the boundary issue to prevent federal law from “being hamstrung.”⁵⁴ Dole reviewed the papers from the Department of the Interior and the General Land Office. After his review of the documents, including maps, he determined that the only ceded lands were south of the South Platte River. This land was simply stolen. Evans disputed Dole and claimed that the Indians were making plans to drive the whites off the unceded land. Evans claimed depredations and troop activity in that region as proof.⁵⁵ To this day the land is still unceded.

On July 16, 1863, Dole asked Evans to get together with the Cheyenne and Arapaho who had not signed the treaty or make other arrangements that would be just to them and satisfactory to the whites.⁵⁶ Dole said that William Bent provided “insufficient data” to the Office of Indian Affairs. He then instructed Evans to “adopt such a kind of policy as may be found Expedient.”⁵⁷ The controversy over the terms and signatures continued because of Dole’s perceived inconsistency. Browne was skeptical of the accusation of Bent misinforming the government. Since the Northern and Southern Cheyenne and Arapaho did not range together, provision was made for them to come in and unite with the southern bands, but they did not come in and they did not sign the treaty.⁵⁸ Browne said the Northern Cheyenne and Arapaho had always claimed the lands north of the South Platte. He then demanded that Dole treat with them at once and settle the question of jurisdiction.⁵⁹

Evans never accepted Dole’s interpretation of the 1861 treaty and his actions were those most likely to cause a war. If Evans had followed Dole’s interpretation, it would have interfered with his plans to build railroads through this territory. In late November, Evans was in New York attending a meeting of the Pacific Railroad company.⁶⁰ Evans was not familiar with the usual spring movements of the Cheyenne and Arapaho, and he interpreted their actions as hostile, especially after the usual spring clashes began. In March, Lieutenant George Hawkins investigated reports of pillaging on the Platte and found none. He did report to Evans that “the Indians talk very bitterly of the whites—say they have stolen their ponies and abused their women, taken their hunting grounds, and that they expected that they would have to fight for their rights.”⁶¹ Evans’s determination to continue with his plans to build railroads was the only thing important to him, so he failed to listen to or understand the Cheyenne and Arapaho point of view.⁶² Since Congress still had not appropriated funds to carry out the basic provisions of the Fort Wise Treaty, the reservation was not ready to occupy even if the Cheyenne and Arapaho had agreed to his terms.⁶³

In late summer, Evans sent Elbridge Gerry, aka Little Gerry, out to ask the Cheyenne to meet with him to get additional signatures. At that time, the Cheyenne were breaking into smaller bands to move and find grass to fatten their ponies. All the grass around the large camp had been eaten to the ground. It was also time for the fall buffalo hunt. Gerry told Evans that the Cheyenne did not want to meet with him and thought this was evidence of their being hostile. He said they were no longer interested in peace.⁶⁴ This inaccurate reporting by Gerry

only added to the growing tensions in Colorado Territory.

In August of 1863, Friday, Roman Nose, and Black Bear, who had previously refused to move to Sand Creek, surprisingly signed an agreement with the Upper Platte agent, Loree. They said they knew about the upcoming conference and agreed to abide by any treaty that had been made by their tribes with the United States. Spotted Horse and Shield of the Cheyenne also signed the agreement. The document they signed stipulated that no special considerations or gifts had been given to encourage them to sign. Annuities were not issued until after the document was signed. When the other Upper Platte Cheyenne chiefs found out what Spotted Horse and Shield had done, they threatened to kill them since the Council of 44 had not approved the agreement.⁶⁵

Cavalry officer and author Eugene Ware reported that while on a march south from Fort Laramie, they came upon the Woc-a-pom-any Agency, where Loree was agent. He mentioned that Loree was not at the agency and spent his time confined to safe places while simply drawing his government salary.⁶⁶ Loree was also withholding hunting ammunition, and there was a shortage of annuities. Loree was also accused of other fraudulent practices.⁶⁷ These shady practices likely involved his friends, whom he appointed as traders.

One of the points most revealing of Evans's double-dealing with the Cheyenne and Arapaho is when the chiefs were earnestly asking for a peace treaty and Evans refused to make a peace treaty with them. Instead, he abrogated his responsibility as superintendent of Indian affairs in Colorado Territory and turned over peace keeping to the military. At the time Major General Samuel R. Curtis was in command of the troops for Colorado Territory. His general attitude was that to achieve a permanent peace, the Indians should receive further punishment. Punishment and chastisement were words used commonly among military officers and government officials when discussing the resolution of Indian conflicts. It was as if the Indians were not capable adults who needed to be treated like unruly children. Little thought was given to the causes of the conflicts with the Cheyenne and Arapaho. Later, Evans said that he felt "an error may have been made in neglecting to make the best possible use of the disposition by a portion of the chiefs toward peace"⁶⁸ As superintendent of Indian affairs, his job was to provide some protection for the Cheyenne and Arapaho and to determine what could be done to keep the peace.⁶⁹

1864: THE YEAR OF TRAGEDY

In January of 1864, Commissioner Dole gave Evans permission to make peace with the Cheyenne and Arapaho. He also said the peace process could be used to give them lands other than those set aside in the Fort Wise Treaty. Evans's duties as superintendent of Indian affairs were not a priority for him. He did not follow up on Dole's permission and instructions to seek peace with and other land for the Cheyenne and Arapaho. He wanted the Indians out of Colo-

rado Territory as he considered them a hindrance to commerce and the building of railroads. Evans's lack of follow-up was the first step in a chain of events that led to tragedy. During the war of 1864, Evans stated that the failure of the Indians to meet with him in 1863 was a sign of hostility, but in his reports to the commissioner of Indian affairs in 1863, he did not indicate any signs of hostility.⁷⁰

On January 28, 1864, H.P. Bennet, the Colorado delegate to Congress, wrote to Commissioner Dole that troops should be removed from the 1861 treaty reservation and posted on government lands just above the reservation. Arapaho chiefs agreed to move to the reservation if the military was removed from the reservation. The troops were not removed. Bennet also reports that three years have elapsed since the 1861 treaty, and no progress has been made in providing for the Cheyenne and Arapaho on the reservation set aside for them. Bennet's letter was sent to the secretary of the interior, who sent it to the secretary of war. There is no evidence of any action taken to remove the troops from the reservation.⁷¹

In 1862, Simeon Whitely was appointed as agent for the Utes. He made one trip to Ute territory and returned because there were no buildings or Utes at the agency. This resulted in Whitely returning to Denver and living in a hotel for some time before Dole discovered his lack of performance at taxpayer expense, and ordered him to assist in whatever way he could. Since Evans was the superintendent of Indian affairs he had primary responsibility for Whitely's behavior, but he was too busy with other matters to monitor Whitely's activities. After Dole's admonishment, Evans sent Whitely to Camp Collins to hold talks with Chief Friday and members of other friendly Arapaho bands in early 1864. The Arapaho wanted a reservation along the Cache la Poudre in exchange for peace. This reservation would have forced sixteen white families to move. These families were squatters since they were living on unceded territory. Whitely was so incompetent that most of the Arapaho bands left by early spring. Friday and his band were the only ones left at the fort. No agreement was reached.⁷²

On April 1, Judge Wright turned over to Agent Colley the property he held for the Caddos, who were destitute. They needed clothing and provisions, which Wright had not provided to them. Wright had managed to build three houses of three rooms each. These houses were reported to be unusable for the Caddos. Three houses, even if they had been usable, were not nearly enough. There were over 400 Caddos who had come to Colorado Territory. By October 20, the Caddos were reported to still be destitute. Neither Wright nor Colley had made a real effort to improve their condition. Farming tools given to Colley probably never made it to the Caddos.⁷³ Given Colley's behavior with other Indian goods, it is likely he gave them to his son Dexter as inventory for his trading business. Farming tools would have been a useful commodity to sell to the invading white farmers who were arriving in greater numbers.

On April 4, Special Agent H.T. Ketchum reported to the commissioner of Indian affairs that the Cheyenne had been very successful in their buffalo hunt and were able to purchase goods from white and Mexican traders. The Cheyenne were being paid about 25% of the worth of the

robes. Approximately 200 robes had been traded for whiskey. Often the whiskey was watered down so that the value of the whiskey traded for a robe was only about \$.25. Deceitful trading with the Indians was common, and the laws governing traders were rarely enforced. A trader named Beggs traded eleven one-dollar bills for ten ten-dollar bills to a Cheyenne. When the Cheyenne discovered the trickery, he pursued Beggs to Fort Dodge. Beggs was able to escape, but his young son was killed.⁷⁴

In March, Indian Agent Colley met part of the Cheyenne and Arapaho tribes at Fort Larned. Colley told Evans that they had refused to smoke the war pipe with the Sioux and that they were all friendly and everything was quiet. Because Evans had made up his mind that the Cheyenne and Arapaho intended war, he did not believe Colley. After Colley's meeting, Major General Curtis ordered the Colorado troops sent to the east. Immediately after this order to go east, the Colorado Cavalry made an unprovoked attack on the Cheyenne. This attack drove the Cheyenne to war.⁷⁵ Evans seemed to believe whatever was expedient for his purposes regardless of the facts at hand.

In the spring of 1864, it was reported that 175 head of cattle had been stolen from the Irwin-Jackman Company and inquiries were made. There was skepticism about the report after a search for Indians in the vicinity found none. The cattle were eventually located near the Republican River. Villages were burned on the way to finding the cattle by the military. Irwin and Jackman were military contractors, and they made no claim for depredations. This would be unusual due to the value of the missing cattle.⁷⁶ Major Jacob Downing, the Colorado commander, did not find any Indians, though he declared he would punish any he found. This was part of a policy of "search and destroy" that Colorado troops were developing.⁷⁷ According to George Bent, son of William Bent and Owl Woman, Lieutenant George S. Eayre was ordered to find the Indians who were accused of taking the oxen and demand their return. His orders were to talk to the Indians first and only attack if the oxen were not returned. Eayre "simply marched his outfit toward Indian hunting grounds and attacked every camp he ran across."⁷⁸ Bent said that the military was afraid the Indians would submit to the military's demands. This would have given the military no reason to start a fight. After the Cheyenne fled, Eayre's troops looted a village.⁷⁹

In May, Downing surrounded a sleeping Cheyenne village and killed 26 people, wounded 30, and burned lodges and other property for the stealing of one horse from a white man.⁸⁰ Prior to the destruction of this village, Downing captured Chief Spotted Horse, who was honoring the Fort Wise Treaty. Downing made no effort to ascertain Spotted Horse's adherence to the treaty but threatened to burn him on a pyre that had been constructed. Spotted Horse finally agreed to lead Downing to his village. After the attack, which reportedly included the killing of women and children, Downing took the band's horses and distributed them to his troops.⁸¹ Under current international law this attack, as well as subsequent historic attacks and massacres against Indians in Colorado, would be considered crimes against humanity.

On June 11, the Hungate family was attacked and murdered near their cabin on the Van Wormer ranch. Nathan Hungate was an employee on the ranch. The news reports of the time say there were four Indians who attacked the cabin, and that Hungate was rushing back to the cabin to save his family. These news accounts were not true. It is likely that the attack was revenge for Hungate having wounded an Indian while protecting his employer's stock. The Hungates and their two children were killed after their cabin was set on fire and they fled the cabin. There was even one sensational and incendiary story that a fetus had been cut from Mrs. Hungate's body. This also was not true. The men who found the family loaded them into a wagon and displayed their corpses in Denver, which inflamed an already hostile white population. Recent archeological evidence conducted by Jeff Broome shows that Hungate had state-of-the-art carbines and pistols. It would have taken more than four Indians to have gotten close enough to the cabin to set it on fire. Hungate's best carbine had been fired so rapidly that the barrel melted. Another incongruity in the Hungate story is that arrows and a moccasin were found at the cabin site. Since the Indians had been reported to be in poor condition for some years before this attack, why would they leave arrows and moccasins behind?⁸² These were valuable items that would have taken time and resources to replace.

Robert North, who lived with the Arapaho, sent a message to Evans on June 15. He said, "Indians have been cheated by a few traders and will not listen to reason."⁸³ North was Evans's confidential source for his belief that the Cheyenne and Arapaho had formed an alliance with the Sioux. North was allegedly a "spy" for white officials in Colorado Territory. Because of his false story of the Cheyenne and Arapaho alliance with the Sioux, Evans and other officials in the territory became fearful to the point of panic. George Bent, in a letter to George Hyde, said that North loafed around the Arapaho camp and lived off the Indians. He called him a miserable white man. Bent said that the story North told Evans about the smoking of the war pipe was a lie. Bent had been in the Cheyenne camps at the time.⁸⁴ Evans's repeated requests to General Curtis illustrate his sense of fear. John Smith, an interpreter and Indian trader, confirmed that the tribes were plotting war, but the Arapaho and most of the Cheyenne had not agreed to join the Sioux in going to war. Charles (aka Charley) Bent, the half-Cheyenne son of long-time trader William Bent, said the Cheyenne and Arapaho had refused the war pipe. Only the Cheyenne Dog Soldiers had formed an alliance with the Sioux. The Dog Soldiers did not sign the 1861 treaty and did not feel bound by its provisions.⁸⁵

On June 16, Evans wrote to General Curtis regarding the need for additional troops and that he had applied for authority to raise a regiment of "100 days men." One-hundred-days men were not regular enlisted U.S. army soldiers, but were instead ordinary and (as described by Ken Wilson in his TREC report on the Southern Cheyenne and Arapaho) usually poorly trained and disciplined male citizens, who volunteered to participate in military activities, action, and fighting for 100 days. Acting Commissioner of Indian Affairs Charles E. Mix told Evans in a letter dated June 23 to "keep the peace." Mix stated further, "It is not contemplated

that Indians should be collected and fed on the reservation, but they should be concentrated if anywhere, about the buffalo range. Contract no debts as Congress will not appropriate.”⁸⁶ One of the problems with Mix’s solution is that whites would not have been able to tell the difference between the friendly Indians and the unfriendly ones, as they would all have been on the buffalo range. On June 27, Evans issued a proclamation telling friendly Indians to come into designated locations to prevent being killed. Since distances were great and communication was poor (partly because of the language differences) this proclamation was ineffective. Evans also lacked the military authority and funds to feed peaceful Cheyenne and Arapaho at Fort Lyon (formerly Fort Wise). Evans’s lack of military authority flowed from his abrogation of his authority to General Curtis in 1863. On July 12, Evans sent \$3,000 to Agent Samuel Colley to feed the tribes as they arrived. On June 27, Evans issued the following proclamation:

**COLORADO SUPERINTENDENCY INDIAN AFFAIRS,
Denver, June 27, 1864.**

TO THE FRIENDLY INDIANS OF THE PLAINS:

Agents, interpreters, and traders will inform the friendly Indians of the plains that some members of their tribes have gone to war with the white people. They steal stock and run it off, hoping to escape detection and punishment. In some instances they have attacked and killed soldiers and murdered peaceable citizens. For this the Great Father is angry, and will certainly hunt them out and punish them, but he does not want to injure those who remain friendly to the whites. He desires to protect and take care of them. For this purpose I direct that all friendly Indians keep away from those who are at war, and go to places of safety. Friendly Arapahoes and Cheyennes belonging on the Arkansas River will go to Major Colley, U.S. Indian agent at Fort Lyon, who will give them provisions, and show them a place of safety. Friendly Kiowas and Comanches will go to Fort Larned, where they will be cared for in the same way. Friendly Sioux will go to their agent at Fort Laramie for directions. Friendly Arapahoes and Cheyennes of the Upper Platte will go to Camp Collins on the Cache la Poudre, where they will be assigned a place of safety and provisions will be given them. The object of this is to prevent friendly Indians from being killed through mistake. None but those who intend to be friendly with the whites must come to these places. The families of those who have gone to war with the whites must be kept away from among the friendly Indians. The war on hostile Indians will be continued until they are all effectually subdued.

JOHN EVANS,
Governor of Colorado and Superintendent of Indian Affairs.⁸⁷

Chivington had ordered all fort commanders to keep the Indians away from their posts. His policy was to shoot first and ask questions later. There was no order to attempt to differentiate friendly Indians from hostile Indians. Because of the conflicting policies, no solutions were created.

In August, Evans issued his second proclamation. The proclamation allowed any citizen to kill hostile Indians. The relevant portion reads as follows:

Now, therefore, I, John Evans, governor of Colorado Territory, do issue this my proclamation, authorizing all citizens of Colorado, either individually or in such parties as they may organize, to go in pursuit of all hostile Indians on the plains, scrupulously avoiding those who have responded to my said call to rendezvous at the points indicated, also to kill and destroy, as enemies of the country, whenever they may be found, all such hostile Indians. And further, as the only reward I am authorized to offer for such services, I hereby empower such citizens, or parties of citizens, to take captive, and hold to their own private use and benefit, all the property of said hostile Indians that they may capture, and to receive for all stolen property recovered from said Indians such reward as may be deemed proper and just therefor.⁷⁸⁸

This proclamation set the stage for officially sanctioned genocide and created the atmosphere for the events at Sand Creek.

Evans again requested authorization to raise a regiment of 100 days men. His request was finally granted. His attitude was that this regiment was raised to kill Indians. The request for peace from the Southern Cheyenne and Arapaho was a shock to Evans's plan. He did not really want peace as he felt he would be embarrassed by his panicked attitude. Both Evans and Chivington had reason to avoid peace. Chivington knew that the only way for him to attain the rank of brigadier would be in battle. At the time of the Camp Weld peace council, the Third Regiment of 100 days men was finally ready to go into battle. If the 100 days men saw no battle, Evans would lose his credibility.⁸⁹

On August 26, Evans approved Charles Autobees's offer to pursue and attack Indians in their villages. This approval seems to be in potential conflict with the above proclamation.⁹⁰ Even though Autobees had experience with Indians as a scout and had worked for William Bent, it would have been probable that non-hostile Indians would have been killed in attacks on any Indian villages.

In September, Colonel John Chivington sent Lieutenant Eayre out against the Cheyenne. He found a village where everyone had fled. Eayre destroyed the village. He also reported that they had killed 17 Indians, including two chiefs. He reported the battle lasted seven and a half hours. William Bent met the Cheyenne on his way to Kansas City for his annual buying trip. They said that the two chiefs had advanced toward Eayre's battle line to talk, and the troops

killed them and instigated a fight. Black Kettle told Bent that if he had not stopped the fight all of Eayre's troops would have been killed.⁹¹

On September 14, Evans sent a letter to Chivington in which he enclosed the letter from Colley and Black Kettle's letter asking for peace. This letter gave the location of the Arapaho and other tribes because Black Kettle promised to help the government fight other Indians.⁹² Edward Wynkoop, then a major, had been also talking to Black Kettle and other chiefs who wanted peace. He agreed to accompany them to Denver to meet with Evans. Evans did not want to meet with the chiefs, but on September 28 he met with them at Camp Weld. In addition to Evans and Chivington, Colonel George Shoup, Major Wynkoop, and Whitely were present at the meeting. Whitely's task was to record verbatim what was said at the meeting. It was reported he did a poor job, which may have contributed to the Sand Creek Massacre.⁹³ The meeting ended with the Camp Weld Agreement. The Camp Weld Agreement made those chiefs who attended the meeting and their bands prisoners of war. The chiefs returned with Wynkoop to Fort Lyon and its camp and surrendered there. Chivington had ordered the Cheyenne and Arapaho to surrender at Fort Lyon. On November 2, General Curtis relieved Wynkoop of his command after hearing rumors that he allowed Indians to camp near Fort Lyon. This was in violation of military field order No. 2, which forbade commanders to allow encampments of Indians near military forts. Curtis did know about the Camp Weld Agreement and that the Indians camped there were prisoners of war.⁹⁴

On September 28, simultaneously with the Camp Weld Council, Curtis ordered Chivington to deliver up the bad Indians and that stolen stock be restored. Curtis feared that the Interior Department would be ready to make presents too soon. He said, "It is better to chastise before giving anything but a little tobacco to talk over. No peace must be made without my directions." The word "chastise," like the word "punish," generally meant "kill." On September 29, Evans sent a letter to Colley telling Colley that he had met with the chiefs who were asking for peace, and that he declined to make peace as it might embarrass those engaged in military operations against the hostile Indians of the plains.⁹⁵

In the fall, Brigadier General P.E. Connor telegraphed Chivington asking, "Can we get a fight out of the Indians this winter[?]"⁹⁶ After receiving word that General Connor would be arriving from Utah, Evans wrote to him and said he was glad Connor was coming. In the letter, Evans said he had "no doubt Indians can be chastised in the winter, which they very much need. Bring all the forces you can, then pursue, kill, and destroy them, until which we will have no permanent peace on the plains."⁹⁷ This letter laid bare Evans's animosity toward the Indians. It also was Evans's blatant call for genocide.

Connor arrived in Denver on November 14 and met with Evans on November 15. Evans encouraged a campaign in this meeting with Connor. On November 16, Evans left Denver for Washington even though his request to Secretary of State William Seward of October 18 for a visit had not been answered. Seward felt that the military campaign was not his responsibility.⁹⁸

When Chivington met with Connor he was uncooperative, since Connor's plans for a winter campaign would interfere with his own schemes. On November 17, Chivington turned down Connor's request for support. Chivington left Denver with his staff and a battalion of the First Colorado Cavalry on November 20. They would be joining the Thirdsters (100 days men) who were already assembling on the Arkansas River. Chivington, who was not cooperating with Connor, was not aware of the plans that Evans and Curtis, along with Connor, were developing. On November 24, Chivington advised Curtis that Indians had attacked two wagon trains below Fort Lyon. He said four men were killed and 200 head of stock were stolen. No one else ever mentioned these incidents. Chivington was merely fabricating a reason to be out of his assigned district to pursue his goal of military glory.⁹⁹ General Curtis told Chivington to disregard the boundaries of his military district if he was in pursuit of hostile Indians.¹⁰⁰ In the two weeks prior to the massacre at Sand Creek, Chivington and his troops were seemingly hiding. He kept his plans secret from Evans and other superior officers, including Generals Connor and Curtis. The only one who knew his destination was Colonel George Shoup.¹⁰¹ Chivington knew those camped at Fort Lyon and then at Sand Creek were prisoners of war. He had attended the council and ordered the manner of surrender.

Wynkoop was replaced at Fort Lyon by Major Scott Anthony on November 25, 1864.¹⁰² Wynkoop stayed on at the fort to brief Anthony regarding the situation with the Indians. Wynkoop then left to return to Fort Larned, shortly before the attack at Sand Creek. After Anthony assumed command, he ordered the Indians to move to Sand Creek under orders from Curtis, to keep them away from the fort. Wynkoop had treated the Indians like the prisoners they were and provided prisoners' rations to them. When Anthony took command, he ceased the half-rations and told them to hunt for their food. This would have been difficult because they had surrendered their weapons.

Major Anthony had noticed an absence of travel and mail from Denver over the past three weeks. He ordered Captain Silas Soule to investigate because there were suggestions of Indian problems.¹⁰³ It turned out that Chivington was the reason for the dearth of travel and mail; he was stopping all travel on the road where he was camped with his troops, awaiting those who were following behind.¹⁰⁴ Not knowing this, Soule left with 20 troops before sunrise on November 28. After they had traveled about ten miles above the fort, they met a wagon and mule team headed in the direction of Fort Lyon. Soule asked the driver if he had seen any Indians and the driver replied that he had not. The driver told Soule that Colonel Chivington was behind him with ten or twelve companies of 100 days men. Soule then rode on and met Chivington. Chivington asked Soule if he knew he was coming, and Soule said he had only learned of Chivington's arrival from the wagon driver. Chivington then asked Soule if there were any Indians at the fort. Soule said Cheyenne and Arapaho were camped not far from the fort, stressed that they were peaceful and considered to be prisoners of war, and were awaiting word from General Curtis. Chivington then said, "They won't be prisoners after we get there."

To prevent the driver from arriving at the fort ahead of him, Chivington, accompanied by Major Downing, rode ahead of the column to reach the fort first.¹⁰⁵

When Soule arrived back at the fort, he conferred with Lieutenants Joseph Cramer and Horace Baldwin regarding Chivington's plan to attack the Cheyenne and Arapaho camped at Sand Creek. They agreed that Chivington should be persuaded to call off his planned attack. Anthony, Cramer, and some others warned Soule not to go to the camp where Chivington was because Chivington had made threats against Soule for opposing his plan. Cramer did talk to Chivington and told him that attacking the encampment at Sand Creek would be murder. He said that Wynkoop had pledged his word as an officer and a man to the Indians that they would be safe. Chivington then said that Wynkoop and Cramer should leave the military.¹⁰⁶

When Chivington arrived at Fort Lyon on November 28, on his way to the Sand Creek encampment, Major Anthony enthusiastically greeted him. Chivington's march there had been secretive because he knew that he was moving against peaceful Indians who had surrendered and were under government protection.¹⁰⁷ Chivington's motivation for attacking the peaceful Cheyenne and Arapaho was to win a great military victory and be promoted to brigadier. When he arrived at Fort Lyon, he posted pickets to keep anyone from leaving the fort to warn the Cheyenne and Arapaho encamped at Sand Creek. George Bent, who was at the fort at the time, was forced to give directions to Chivington on his final march overnight to Sand Creek.¹⁰⁸

Early on November 29, while most of the Cheyenne and Arapaho were still asleep in their lodges, Chivington attacked. Even though George Bent, mounted right at Chivington's side, said he saw the white flag and the American flag which were clearly visible attached to Black Kettle's lodge, Chivington, in sworn testimony to the Doolittle Committee, said he had not seen the flags. Chivington inflated the number of those killed at Sand Creek, especially the number of warriors.¹⁰⁹ There were three investigations into the Sand Creek Massacre. Wynkoop, restored to command of Fort Lyon, conducted the first investigation. The Congressional Committee on the Conduct of the War oversaw the second investigation, which was completed during the first half of 1865. The Senate Indian Affairs Committee, headed by Senator James Doolittle, handled the third investigation. The Doolittle Report was not released until 1867—without the appendices which contained all the witness testimony. Because of this lack of documentation, Chivington was considered a hero in Colorado until his death. The Sand Creek Massacre cost the government \$30,000,000 because of the retaliation of the Cheyenne and Arapaho against the white invaders and the U.S. military. After the Sand Creek Massacre, the Rocky Mountain News reiterated that white men had been the aggressors and were also the cause of problems with the Indians in the spring of 1864.¹¹⁰

During the entirety of 1864, Evans had continued his correspondence with the Department of War, complaining about Indian depredations. His letters became more strident as the year progressed. Evans's reports did not stand up to scrutiny. Professor Hill arrived in Denver and in only a few days understood the problem. He said, "Rumors are floating around every day of

some Indian depredation, but when you resolve it all down to simple fact, it amounts to a few soldiers killed in April, one family murdered a few days ago ... and numerous little thefts.”¹¹¹ Letter books of the Arapaho City postmaster show that he regularly corresponded with the postmaster general in Washington, but did not mention hostile Indians until January 14, 1865, after the massacre at Sand Creek. One man newly arrived in Colorado wrote in September of 1864 that the operator of the stage line was exaggerating the danger from Indians in order to get a better contract.¹¹²

In December 1864, Lincoln personally wrote in a letter to Evans that he still had confidence in him. Evans met with Lincoln and the aid of James M. Ashley, chair of the House Committee on Territories, and presented his case. Lincoln continued to express support for Evans.¹¹³ There was disagreement on whether Evans should resign. Delegate Alan A. Bradford wrote a letter to President Johnson requesting Evans’s immediate removal. He charged Evans with inefficiency, neglect of duty, pursuit of private interests, and interference in the statehood election of 1864. He charged, “In his management of Indian affairs in the Territory, he has pursued a policy that has intensified the hostility of the Indians and provoked their attacks upon the citizens of the Territory and the routes of travel, thus preventing emigration and disturbing business and trade. He has given countenance and encouragement to massacre of peaceable Indians and destroyed their faith and confidence in the sincerity and obligation of Government Treaties.”¹¹⁴

From December 14 through 19, Wynkoop, reassigned to command at Fort Lyon, took statements from Captain Silas Soule and Lieutenant Joseph Cramer about the events of November 29 at Sand Creek. After he took these statements, he made multiple copies and sent them to various military commanders. On December 20, Chivington requested that Curtis relieve him of command. Under General Order 63, Colonel Thomas Moonlight took command of the Military District of Colorado.¹¹⁵

On December 23, 1864, Anthony wrote to his brother and said that Chivington’s actions were foolish. “Anyone not desiring to make himself a brigadier general could have gone to that ‘peacable [sic] camp’ with 200 men and killed the last Indian there, without losing in killed and wounded 10 persons.” The letter went on to say that Chivington wanted to get back to Denver for fear he could not get promoted before reports in detail were published showing his foolish action at Sand Creek. There had been rumors about a two-day-old scalp being found in one of the lodges at Sand Creek. Anthony said no one at Fort Lyon had heard of a two-day-old scalp. Anthony closed his letter by saying, “I would rather be a private in a negro [sic] regiment. They would not take me... when they found I was engaged in the Sand Creek battle.”¹¹⁶

On January 10, 1865, Congress ordered an investigation by the Joint Committee on the Conduct of the War into the massacre at Sand Creek. On February 1, the War Department ordered Moonlight, Chivington’s replacement, to form a military commission to investigate

the massacre at Sand Creek and the actions of Colonel John Chivington. On March 3, Senator James R. Doolittle was appointed chairman of a special joint commission to investigate the condition of the Indians and “The Chivington Massacre.”¹¹⁷

Major Anthony’s report to headquarters on November 2, 1864 states that the Indians had few arms, which were in poor condition, and little ammunition. He also stated that the Indian ponies were in poor condition and that the Indians were prisoners of war.¹¹⁸ The deposition of Lieutenant W.P. Minton states that the officers at Fort Lyon told Chivington of the arrangements made by Wynkoop and Anthony with the Cheyenne and Arapaho villages.¹¹⁹ This testimony, along with Chivington’s presence at the Camp Weld Council—which led to his orders for the Cheyenne and Arapaho to surrender at Fort Lyon—demonstrates that Chivington’s motives were dishonorable. U.S. Marshal A.C. Hunt testified that Chivington’s policy was to exterminate the Indians. Chivington attacked the Indians to get a promotion.¹²⁰ Curtis wrote to General Henry W. Halleck that Chivington’s command toward friendly Indians had been a series of outrages to make them all hostile.¹²¹

On April 23, Charles Squier and William Morrow of the Second Colorado (U.S.) Volunteer Cavalry murdered Silas Soule in Denver. The two men then left the city after the murder. Squier was later captured and jailed. He later escaped, and neither he nor Morrow were ever tried for the murder of Silas Soule.¹²²

On May 30, Secretary of Interior James Harlan wrote to Evans to tell him that he had talked to Secretary of State Seward regarding the report of the Committee on the Conduct of the War. The Committee’s report condemned Chivington’s actions and called for Evans’s resignation. Harlan told Evans that he would do nothing until Evans had a chance to defend himself. On July 18, Seward wrote to Evans and said the President had requested his resignation as governor of Colorado. The letter stated, “Circumstances connected with the public interest make it desirable that the resignation should reach here without delay.” On August 12, Harlan wrote to Evans and said that Seward was satisfied with him as governor of Colorado, “but that on account of the report of the Committee on the Conduct of the War, he thought it would be best for you as a friend of the Administration to resign quietly.”¹²³ Chivington was never brought to justice for his crimes. One of the reasons given was that no jury in Colorado would convict him.¹²⁴

After the Sand Creek Massacre, the Cheyenne met with Jim Beckwourth, a former scout. Beckwourth told them to forget about going to war because they could not win. They replied, “We know it. . . . But what do we want to live for? The white man has taken our country, killed all of our game was not satisfied with that, but killed our wives and children. Now no peace. We want to go and meet our families in the spirit land. We loved the whites until we found out they lied to us and robbed us of what we had. We have raised the battle-axe until death.”¹²⁵

1865 AND THE TREATIES OF THE LITTLE ARKANSAS

Article II of the 1865 Little Arkansas Treaty proposed to the Cheyenne and Arapaho specified a new reservation in Indian Territory and part of Kansas. The U.S. Government did not have title to all that land, and the Cheyenne, Arapaho, and Plains Apache were not required to reside on the new reservation. Article III permitted the Indians to reside in the territory they claimed between the Arkansas and Platte Rivers, except for those portions occupied by white colonists. At the “special request of the Cheyenne and Arapaho,” 640 acres each was granted to persons who were related by marriage or blood to white persons. Those would have been people like the children of William Bent. Only 160 acres each was awarded to full-blooded Cheyenne and Arapaho survivors of Sand Creek and their descendants. Lands were granted in fee simple and could not be sold for 50 years. Article VII stipulated annual expenditures of \$20 per capita prior to location on the reservations and \$40 per capita after removal to the reservations. These expenditures could be in U.S. securities or goods according to the determination of the secretary of the interior.

This treaty was never ratified even though a small amount of money was paid to the tribes. The promised land was never given. The Cheyenne said they had refused to sign the treaty amendments.¹²⁶ The Cheyenne Dog Soldiers refused to sign any part of the treaty.¹²⁷ Little Raven forced an agreement that said any treaty agreed to on the Little Arkansas would only be binding on those who signed it.¹²⁸ Black Kettle asserted that he did not speak for Indians who were not there. Black Kettle also said at the council, “Your young soldiers I don’t think they listen to you. You may bring presents, and when I come to get them, I am afraid they will strike me before I get away. When I come in to receive presents, I take them up crying. . . . My shame is as big as the earth, although I will do what my friends advise me to do. I once thought that I was the only man that had persevered to be the friend of the white man, but since they have come and cleaned out our lodges, horses and everything else, it is hard for me to believe white men any more. . . . All my friends—Indians that are holding back—they are afraid to come in; are afraid they will be betrayed as I have been.”¹²⁹ Most Cheyenne and Arapaho rejected the treaty and felt no obligation to abide by its provisions.¹³⁰ George Bent said that only one sixth of the Cheyenne were present and that his father, William Bent, was at the council. Bills were introduced in Congress in 1949, 1957, and 1965 to pay compensation for the lands taken under this treaty. None passed. In 2013, *Flute et al. v. United States* was filed under a new law allowing such suits. The suit was dismissed because the U.S. attorneys argued that the government was no longer responsible for reparations. Ironically, the attorney who filed the suit was a former U.S. attorney. The Tenth U.S. Circuit Court affirmed the dismissal and in 2016, the Supreme Court declined to hear the case.

Article II of the 1865 Little Arkansas Treaty proposed to the Kiowa and Comanche outlined a reservation for them in Indian Territory. Article III allowed them to roam and hunt on lands they previously claimed as theirs that were unoccupied and located south of the Arkansas

River. After removal to the reservation, they would be given the equivalent of \$15 per capita and would need written permission from the agent to leave the reservation. This treaty was ratified in May of 1866.

Commissioner Dole wanted to let territorial governors work toward extinguishing Indian title.¹³¹ Dole ordered that “the valley of the Platte River and all the country south must be entirely abandoned by the Indians with whom you treat.”¹³²

1866

In the winter of 1866-1867, the military said it had reliable information that the Indians planned to make a joint raid as soon as the grass was green and the ponies regained strength. Meanwhile, the Kansas Pacific Railroad had plans to build another 100 miles of train tracks into Indian Country. To protect the railroad operations, General Winfield Scott Hancock, a veteran of both the Mexican-American War and the Civil War, was assigned to command the Division of the Missouri and authorized to make an expedition against any hostiles that threatened operations in Western Kansas.¹³³ Although this action was not in Colorado, it did affect the potential to build railroads in Colorado.

General William T. Sherman made a visit to Denver. Local dignitaries requested a military post to protect the town. Sherman denied the request and said 1,000 men could be raised in an hour to protect the neighboring settlement. He also said frontiersmen and interested parties exaggerated Indian dangers.¹³⁴

1867

On April 14, General Hancock met with Cheyenne chiefs at Fort Larned. Since only a few of the chiefs were in attendance, he said he wanted to ride to the village where they were camped and talk to all at once. Because he had no authority to make a treaty, he wanted to intimidate the Cheyenne with the might of the military. He was given permission to approach the village. Edward (aka Ned) Wynkoop, now a lieutenant colonel and also the Indian agent at Fort Larned, accompanied him and advised him against coming too close to the village. Yet Hancock, who had no experience with Indians, ignored Wynkoop’s advice and rode to within a mile of the village. When the soldiers arrived, they were soon greeted with a contingent of warriors equal in strength with the military force. To avoid a battle, Wynkoop rode between the two lines of combatants, was able to speak with the Cheyenne, and averted a skirmish.

When Hancock finally arrived at the village, the lodges were abandoned. All the women, children, and elders had fled. Two members of Hancock’s expedition, Edmund Guerrier, a scout, and Lieutenant Colonel George Armstrong Custer, later gave statements saying the Indians had run away from their village in fear because of what had happened at Sand Creek.¹³⁵ Hancock was angered and sent the chiefs after those who fled. The runaways refused to return.

Custer spent two days looking for those who had fled and was unable to find them.

Hancock was so enraged by this perceived defiance of his assumed authority that he burned the village and all its contents. Wynkoop wrote that six Cheyenne were killed while attempting to cross the Arkansas River. These deaths resulted from Hancock's order that all Indians attempting to cross the river be apprehended.¹³⁶

Hancock had also been given false information by a Major H. Douglas about depredations and the killing of 17 "colored" soldiers. This false information was sent to Douglas by interpreters who wished to curry favor with Hancock and give him a reason to prosecute war against the Cheyenne. Afterward Senator John Henderson of Missouri, a member of the 1867 Indian Peace Commission, said Hancock had been told lies by bad men.¹³⁷

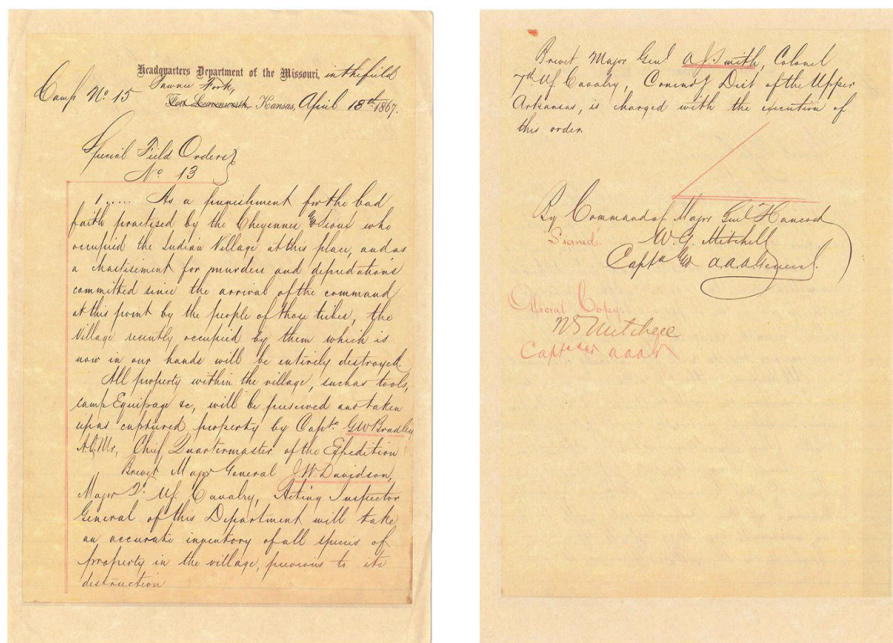


Photo of Hancock's original orders to burn the Cheyenne-Lakota Indian village, NPS Photo, courtesy of the National Park Service, n.d. (<https://www.nps.gov/fols/learn/historyculture/hancock-s-order-to-burn-the-indian-village.htm>).

Wynkoop denounced Hancock and said that Hancock had driven the Cheyenne and their allies to war. Jesse Leavenworth, now the agent for the Kiowa and Comanche, denounced Hancock even more strongly.¹³⁸ Henry M. Stanley, a journalist embedded with Hancock's troops, estimated that the total value of the property destroyed was at least \$100,000. After the destruction of the village, the Cheyenne and their allies retaliated. This retaliation became known as "Hancock's War." Hancock kept 40 of the lodges to give to scouts at Fort Dodge. The total number of lodges burned was 110 Cheyenne and 140 Sioux.¹³⁹

In the *Proceedings of the Indian Peace Commission*, Hancock's statement says the Indians

were drawn up in a battle line before he burned the village.¹⁴⁰ Based upon other accounts, he was either lying or did not understand the dynamics of what had taken place. The Indians were generally not in a state of war before Hancock burned the village. In his testimony, Hancock said he had been documenting depredations, but the agents never requested that those responsible be brought in.¹⁴¹ Hancock continued to mischaracterize the situation on the plains.¹⁴²

1867 AND THE MEDICINE LODGE CREEK (MEDICINE LODGE) TREATY

In the lead-up to the 1867 Medicine Lodge Creek Treaty (Medicine Lodge Treaty), councils were held with the Cheyenne, Arapaho, Kiowa, Comanche, and Plains Apache. In the discussions regarding annuities, a Captain Bogey admitted that the annuity goods were insufficient and not what was wanted or needed. He also said the blankets were very inferior, and shirts were light and thin in texture. Calicoes were also light and thin. The Indians stated the goods were hardly fit to take back to camp, let alone as compensation for their lands.¹⁴³ W.R. Irwin stated that after inspecting the Cheyenne and Arapaho annuity goods, he found them to be inferior. There was no hardware as promised.¹⁴⁴ William Bent, who was present at the time of the distribution of the Indian annuity goods, considered them all of inferior quality, “more so that [*sic*] any goods I ever saw delivered to the Indians.”¹⁴⁵ The promised indemnity for the deaths at Sand Creek and the land that was guaranteed were never received as had been pledged in the 1865 Treaty of the Little Arkansas.¹⁴⁶

Big Head, who described himself as half chief and half Dog Soldier, said he would not sign anything unless the children who had been taken at Sand Creek were returned.¹⁴⁷ Small groups or individuals had taken some of the children prisoner and refused to kill them.¹⁴⁸ Jeff Campbell, an investigator working for the Sand Creek Foundation, says that based upon his investigations, there may have been as many as 30 children taken.¹⁴⁹ John B. Sanborn, a member of the Indian Peace Commission, offered a motion that the Cheyenne children captured at Sand Creek be detained by the proper authority until the commission met with the southern Indians on or near the Arkansas River.¹⁵⁰ There is no indication that such a meeting ever took place.

The actual Medicine Lodge Treaty Council was held in October of 1867 at Medicine Lodge Creek in what is now south-central Kansas. The Kiowa and Comanche negotiations went relatively smoothly. It only involved one addendum to the 1865 treaty, which was to include the Plains Apache. Even though these negotiations went more easily than what was to come with the Cheyenne and Arapaho, Satanta of the Kiowa did not want to give away any land and did not want to trust agents for food.¹⁵¹

The Medicine Lodge Treaty Council was the first treaty council where members of the press were present. There were seven members of the press in attendance. Henry M. Stanley was one of the seven journalists. His contribution to the reporting was important because he

had learned shorthand and was able to record the talks verbatim.

The negotiations with the Cheyenne and Arapaho were contentious. At the beginning of the council the only Cheyennes who attended were those affiliated with Black Kettle. The rest of the Cheyennes said they could not attend until a nine-day ceremony had been completed. When the full contingent of Cheyennes finally arrived, they came in a great show of military precision and horsemanship. During the negotiations, Little Raven said traders do all the mischief. He also said they [unclear to whom “they” refers: the Southern Arapaho? All the Arapaho? The Arapaho and Cheyenne? The traders?] wanted land between the Arkansas and Platte Rivers. Little Raven also said they [the Indians? The Arapaho and Cheyenne?] would rather live as they had previously done and not have presents. “You give us presents and take our land.”¹⁵²

The negotiations stalled. Senator Henderson, who headed the negotiations along with the interpreters, took Buffalo Chief and some of the other chiefs aside for a private talk. After a short discussion, Buffalo Chief, who had been designated to speak for the Cheyenne, shook hands with Henderson and the group returned to the council, where the treaty was signed. No one knew what was said in that private meeting, but likely there was some verbal agreement that was never put in writing. Stanley missed recording this meeting. In Henderson’s conversation, he may have agreed that no white men could go south of the Arkansas River. This provision was never written into the treaty. Additionally, the government seemed to be unaware that this promise did not apply to the large buffalo range in northwestern Texas. When Texas joined the United States, it remained in control of its public lands. Texas also was not a party to the treaty or any of its side agreements, which were thus not valid in Texas.¹⁵³

Chiefs such as Roman Nose and Medicine Arrows (who were both Dog Soldiers) did not attend the Medicine Lodge Treaty Council and did not feel obligated to honor its terms. This caused the white population to generalize and say that all Indians were treaty breakers.¹⁵⁴ The treaty had already been broken by the U.S. government, as it had not appropriated money for annuities in a timely manner.

After the signing of the 1867 Medicine Lodge Treaty, it was thought that white men were prohibited from hunting buffalo south of the Arkansas River. There are multiple sources that state this as fact, including the latest Ken Burns documentary on the buffalo. This may have been the verbal agreement that caused Buffalo Chief to shake hands with Henderson. The treaty says only that the Indians could hunt south of the Arkansas River. There is no prohibition on white men hunting south of the Arkansas River.

The Peace Commission’s intent was that the Indians stop hunting in Kansas and Colorado. However, Senator Henderson told Cheyenne leaders they could hunt between the Arkansas and South Platte Rivers so long as they did not go within ten miles of white settlements. Although there was discussion among the commissioners about changing the treaty before its signing, Henderson said it was not the time for arguing.¹⁵⁵ Even though this provision for

hunting between the Arkansas and South Platte Rivers was in Henderson's summary, it was not included in the final treaty documents.¹⁵⁶ Even General Sherman informed his subordinates that the Cheyenne and Arapaho could hunt between the Arkansas and South Platte Rivers.¹⁵⁷ All the tribes were allowed to hunt in the Big Bend country of the Arkansas River in Kansas, and the Cheyenne were still allowed to hunt in the Smoky Hill range if they stayed clear of white men.¹⁵⁸ This provision also was not included in the treaty. The failure to include these verbal promises in the treaty would later cause the Cheyenne and Arapaho, who did not have a reservation until 1869, to be declared hostile.

As a matter of policy, those who wanted to confine the Indians to reservations and shrink their hunting territories won the debate. Cheyenne Chief Bull Bear said that the Indians still owned those lands. He insisted that no more railroads be built through their lands because the railroads scared the buffalo away.¹⁵⁹ Bull Bear was correct about the lands north of the South Platte River.

In addition to the buffalo problem, there were other errors in the Medicine Lodge Treaty. Its wording gave permission for the Indians to hunt in Texas, yet Texas kept possession of its public lands and was not a party to the treaty. The land given to the Cheyenne and Arapaho included land that belonged to the Cherokee and not to the government. This land was known as the Cherokee Outlet. The Cheyenne and Arapaho objected to the reservation land set aside for them because its location in the gypsum belt between the southern border of Kansas and the Cimmaron River made the water there bitter.¹⁶⁰ Little Raven of the Arapaho thought that when he signed the treaty, that meant the land between Bent's Fort and the Rocky Mountains was part of the reservation. Until he met with General Phillip Sheridan at Medicine Bluff, he did not know exactly where the reservation was located.¹⁶¹ On September 27, 1868, General William Babcock Hazen, assigned command of the military's Southern Indian District at Fort Cobb, Indian Territory, declared the Cheyenne and Arapaho hostile because they were not on a reservation.¹⁶² When General Hazen gave his cost estimates for annuities, he did not include the Cheyenne and Arapaho because they were not on a reservation.¹⁶³ It was not until 1869, when President Grant created an Executive Order Reservation, that the Cheyenne and Arapaho had a reservation. Black Kettle and other Cheyenne and Arapaho fled south. Black Kettle attempted to surrender at Fort Cobb, but was turned away and told to go to the Washita. George A. Custer pursued Black Kettle and attacked, killing Black Kettle and his wife.

Charles Brill says in his book, *Conquest of the Southern Plains*, that the original treaty provided for the payment of all back annuities and restitution as stipulated in the 1865 Treaty of the Little Arkansas. The article with these provisions was removed by the Senate when it finally came up for ratification.¹⁶⁴ This is an important amendment, although other sources do not mention it. Since the Senate's deliberations on treaties were done in executive session with no notes, there is likely no written record of this change. There is one curious coincidence mentioned in Douglas Jones's book, *The Medicine Lodge Treaty*, where members of the

press were not allowed to see the treaty or take verbatim notes. No other sources mention this amendment. Brill does not cite his source for this information. However, he used military and government documents to recount the Washita Massacre, so his book has some credibility.

General Sherman, who was one of the peace commissioners but did not attend the council, wanted the treaty. He thought only a few months of peace would enable the completion of the transcontinental railroad. Sherman believed completion of the railroad would accomplish what no army had yet been able to do: break the resistance of the Plains Indians. Trains bringing a flood of emigrants—whereas previously there had been a relatively small flow of them—would cause a quick extermination of the buffalo (and destroy the Indians' traditional source of livelihood).¹⁶⁵ Congress had been inundated with reports of Indian hostility. The Indian Commission Reports to Congress in 1867 blamed unrestrained settlers, miners, and military personnel as the main instigators of Indian aggression.¹⁶⁶

Article VIII of the Medicine Lodge Treaty gave each head of household title to a plot of land. In return for taking an individual plot, the government gave seeds and implements not to exceed \$100 in value the first year, and \$25 for three succeeding years. Based upon the cost of stock, tools, implements, and other farming necessities, \$100 dollars was not nearly adequate. At the time, the cost of a pair of mules at a military surplus sale was \$120. The cost of a wagon was \$75. A yoke of oxen was \$80.¹⁶⁷ The only items the \$100 could adequately provide for were hand tools and perhaps some fencing. If the government had been sincere about turning the Indians into successful farmers, they would have funded them adequately. Instead, they gave them hard labor in an open-air prison.

THE 1868 FORT LARAMIE TREATIES

The Fort Laramie Treaties of 1868 were the final treaties executed to remove the Plains Indians from what is now Colorado. The Fort Laramie Treaty was specific to the northern Plains Indians, including the Northern Cheyenne and Arapaho. The treaty established that the Northern Cheyenne and Arapaho could choose where they would reside. They were allowed to move to the reservation in Indian Territory with the Southern Cheyenne and Arapaho, or onto land set aside for the Brulé and other bands of Sioux, to be administered by the Red Cloud Agency. They chose to stay in the north.

The 1868 treaty allowed hunting so long as there was sufficient game to justify hunting privileges. General Sherman was opposed to this part of the treaty. Other commissioners assured him that this was only a temporary situation because the buffalo would soon be gone.¹⁶⁸ When land title was obtained, \$100 in seed and implements would be provided the first year, with \$25 provided in the subsequent three years. As an incentive, \$500 per year was allocated to the 10 farmers who, in the agent's opinion, grew the most valuable crops. The crop value would have been determined according to the colonizers' values, not the Indians' values.

Only thirteen Indians in total signed the original [1868?] treaty. The signatures were not shown as affiliated with any individual tribe or band. Because of the large number of bands within the Cheyenne, Arapaho, and Crow Nations, thirteen signatures were not representative of the bands and nations named in the treaty.

By 1868, the influx of hordes of white people had frightened off the buffalo. Without their main food source, the Indians were starving. They were also wary of the military because of Sand Creek and the other attacks on villages, particularly in Colorado. In October of 1868, General Sheridan was authorized to “punish” the Cheyenne. Black Kettle, unaware of his impending death at Custer’s hands before the end of November, was at that time peacefully camped on the Washita.¹⁶⁹

THE BUFFALO SLAUGHTER

The buffalo slaughter was one method the government and the military used to control and subdue the Indians. It was a cruel and wasteful policy that caused the starvation of thousands of people and the near destruction of a beneficial species. If the Indians did not have buffalo to hunt, they would be forced to accept the meager rations issued to them under the terms of the 1867 Medicine Lodge Treaty and the 1868 Fort Laramie Treaty. It was expected that the extermination of the buffalo would also force the Indians into becoming farmers, despite the reality that much of the reservation land was not suitable for farming and droughts were common.

Buffalo hunts by tourists aided by the military were common. [suggest: Buffalo-hunting tours aided by the military were common. Or: The military commonly aided buffalo-hunting tours (or tourists).] General Sheridan took Grand Duke Alexis, a younger son of the Czar of Russia, on a buffalo hunt and was joined by Custer when they reached Omaha, Nebraska.¹⁷⁰ In addition, Sheridan took more than a dozen of his friends from New York, Philadelphia, and Chicago on a hunting trip across the plains. There were 16 wagons. William F. Cody was the guide. Colonel Richard I. Dodge told buffalo hunters when asked where they could hunt buffalo, “If I were a buffalo hunter, I would go where the buffalo are.” He said this in 1873, when the larger herds of buffalo were south of the Arkansas River.¹⁷¹ Given this statement, it is likely that he guided hunts south of the Arkansas River. Dodge led many hunting expeditions. He went with three British “gentlemen” who killed more buffalo than would have fed a brigade. A year later, the air where the hunt had taken place was filled with the stench of rotting buffalo carcasses.¹⁷² In 1854, Sir St. George Gore of Ireland spent an estimated half-million dollars on a hunt that lasted three years and covered 6,000 miles. By the time Gore had finished his hunt, he had killed 2,000 buffalo and thousands of other animals.¹⁷³ By the summer of 1868, excursion trains were bringing parties of sightseers and hunters into the buffalo range. On both sides of the track, Colonel Henry Inman observed, “the most conspicuous objects were the desiccated carcasses of the noble beasts that had been ruthlessly slaughtered by the thoughtless

and excited passengers.”¹⁷⁴ To encourage ridership, railroads offered special buffalo hunting excursions. These excursions were widely advertised in eastern cities. Buffalo were slaughtered from moving train cars. The trains would slow their speed to match that of the buffalo. There were no bag limits, and contests were held to see who could kill the most buffalo.¹⁷⁵



Slaughter of Buffalo on the Kansas Pacific Railroad (illustration from Col. R.I. Dodge), reproduced in Hornaday, William T., *The Extermination of the American Bison*, 1889 (<https://www.gutenberg.org/files/17748/17748-h/17748-h.htm#slaughter>).

A large portion of the tanned hide or robe trade was done clandestinely by trading with the Indians. These clandestine goods were not shipped as freight on the railroads. Freight cars were hired by the traders who loaded the cars themselves. The only information about these operations was the number of pounds the railroads carried. The one or two firms in the United States that engaged in this trade have kept the volume of their trade secret. The numbers that are known are as follows:

Atchison, Topeka, and Santa Fe	19,000 robes per year
Union Pacific	10,000 robes per year
Clandestine on the market	5,000 robes per year, [estimated]
Down the Missouri	55,000 robes per year ¹⁷⁶

In the three years from 1872 to 1874, various plains tribes killed an estimated 1,215,000 buffalo. The white hunters killed 3,158,730. These totals do not include the immense number of buffalo killed by hunters who took their skins out by wagon every year from New Mexico, Colorado, and Indian Territory. The numbers also do not include the buffalo killed by Utes, Bannocks, and other mountain tribes. These numbers also do not include other hides taken each year by various means, including those taken from United States territory by the Hudson

Bay Company. All these other means will add another 1,000,000.¹⁷⁷

The military aided the slaughter of buffalo in more ways than just guiding tourists. They supplied ammunition to buffalo hunters in any quantity needed at any fort on the southern plains. They also provided protection, supplies, equipment, markets, storage, and shipping facilities.¹⁷⁸ The generals actively encouraged troops to kill buffalo for food, sport, or target practice.¹⁷⁹ Custer even held contests to see which of his troops could kill the most buffalo. Prizes would be given to the those who killed the most animals. They took only the tongues to feed the dogs.¹⁸⁰ By 1873, the military had stopped preventing hunters from entering Texas.¹⁸¹ After the hunters started going south of the Arkansas River, the military even drove herds south into the area where the hunters were waiting.¹⁸² Columbus Delano, secretary of the interior, refused to prevent hunters from hunting in the territory of the Sioux, Northern Cheyenne, and Arapaho.¹⁸³ On July 10, 1868, General Sherman's wife wrote a letter to her husband saying that one of his officers brought her twelve buffalo tongues, but she did not know how to cook them.¹⁸⁴ One group of hunters was killing buffalo only for the tongues.¹⁸⁵

The magnitude of the buffalo slaughter is only rivaled by the factory fishing operations of today. The teams of hunters included sharp shooters whose job was to kill as many buffalo as possible. There were large Sharps rifles specifically manufactured for hunting buffalo that allowed the hunters to shoot at the herds from relatively long distances away. The shooters would set up quite a distance away from the herd, determine which female buffalo was the leader of the smaller groups of buffalo, and shoot her first. Because the buffalo could not hear the gunshot, the lead female would simply fall and be ignored; then many others could be shot without the herd stampeding. This "still hunting" method, considered the most deadly to buffalo, was prohibited during Indian hunts. Violators would be flogged. William T. Hornaday, a conservationist and naturalist, considered this method of killing with rifles "unsportsmanlike, unfair, ignoble, and utterly reprehensible."¹⁸⁶

The shooters usually only killed until about noon. After noon, the skinners would skin the buffalo and peg the hides to the ground, turning them every day or two until they were dry enough to stack. The stacks were usually about eight feet high. After the skinners finished, the cutters would take only the portions of the buffalo that could be sold, like hams, hearts, tongues, and humps. Each organization had a cook and a teamster.¹⁸⁷

In 1867 the Clarkson Brothers killed several thousand buffalo along the Smoky Hill and Saline Rivers.¹⁸⁸ One of the hubs for receiving and shipping buffalo hides was Dodge City, Kansas. Charles Rath, who had formerly been associated with William Bent at Bent's Fort, began outfitting buffalo hunters around 1872 through the Charles Rath Mercantile Company.¹⁸⁹ The first winter after the Atchison, Topeka and Santa Fe Railway was built to Dodge City, Rath's company shipped over 200,000 buffalo hides. Also shipped were 200 cars of hind quarters and two cars of tongues.¹⁹⁰ At one point, Dick Russell and his brother had an inventory of 50,000 buffalo hides from only two years of hunting.¹⁹¹ Because of the mass killing of

buffalo by whites in the late 1860s and early 1870s, Indians attacked the white hunters out of concern for their own meat supply.¹⁹² In addition to the hides that had been stripped from the buffalo, there were many buffalo that were not even skinned. For every hide shipped, there were two to twelve unskinned carcasses left on the plains.¹⁹³

By the early 1870s, the slaughter of buffalo was too egregious to be ignored. Even some military officers, including Edward Wynkoop, wrote to Congress urging them to stop the wasteful slaughter of buffalo.¹⁹⁴ In 1870, Wynkoop also wrote to Henry Bergh, president of the American Society for the Prevention of Cruelty to Animals, that the buffalo slaughter must stop because it was the strongest reason the Indians had to declare war. He mentioned a conversation with Little Robe of the Cheyenne, who said to him, “Your people make big talk and sometimes make war if an Indian kills a white man’s ox to keep his family from starving. What do you think my people ought to do when they see their cattle—the buffalos—killed by your race when they are not hungry[?]”¹⁹⁵

In 1871, Representative R.C. McCormick of Arizona sponsored weak legislation that would have limited the killing of buffalo on public land.¹⁹⁶ This legislation did not pass. In 1872, Senator Cornelius Cole of California introduced a resolution on game preservation. It died in committee.¹⁹⁷



MAP ILLUSTRATING THE EXTERMINATION OF THE AMERICAN BISON.
Prepared by W. T. Hornaday.

Map in *The Extermination of the American Bison*, by William T. Hornaday, 1889
(<https://www.gutenberg.org/files/17748/17748-h/17748-h.htm#slaughter>).

Even prominent newspapers of the time began to speak out against the killing of buffalo. In May of 1872, the *Rocky Mountain News* came out against the killing of buffalo from trains. *The Wichita Eagle* said Congress should enact a law against the “wanton destruction of these monarchs of the plains.”¹⁹⁸ In 1874, additional legislation was introduced to stop the slaughter. On the advice of Secretary Delano, Grant pocket vetoed this legislation after it finally made its way through Congress.¹⁹⁹ Delano favored destruction of the buffalo while some states and territories were enacting legislation to protect buffalo.²⁰⁰ General Sheridan even went to the Texas legislature to speak against a bill that would have protected buffalo in that state.²⁰¹ That legislation also did not pass. By 1879, there were not enough buffalo left to make hunting commercially viable in the southern range. The buffalo seemed to have moved north out of Texas.²⁰² It is more likely, given the magnitude of the slaughter, that there were few if any buffalo left in the southern herds. The northern herds were nearly gone by the end of the 1880s.

By the late 1880s there were few buffalo left in Colorado. Colorado had also been an area where commercial hunters slaughtered buffalo. One estimate gives a figure of 2,000 camps of buffalo hunters in Colorado.²⁰³ In 1887, one of the last wild buffalo in Colorado was killed in Logan County. Bill Turner, one of the two men thought to be responsible, said he thought the animal was a three-year-old heifer. She was leading a herd of domestic cattle.²⁰⁴

In 1882, a herd of 25 mountain buffalo still existed in Colorado. These buffalo were driven from the area of Cripple Creek toward Florissant and Lost Park during the gold rush around 1884. In 1897, hunters killed four of Lost Park’s mountain buffalo. The Bartlett brothers, taxidermists, purchased the animals and hid them in a basement until 1901. When they finally advertised in *Outdoor Life Magazine*, the magazine editor alerted the game warden, and one Bartlett brother was arrested. The hides were found in the basement of Charles Bartlett’s home in Buena Vista. However, a technicality in the law caused the judge to dismiss the case.²⁰⁵

The repercussions of the rapid destruction of the bison herds for buffalo-reliant nations are still apparent in contemporary times. In 2010 dollars, annual income per capita was \$3,100 dollars lower than in non-bison-reliant nations. Native Americans who belong to bison-reliant nations are less likely to be self-employed or to own their own homes. Bison-reliant nations have fewer people who have college degrees proportionally, and more of them live on Native homelands whose size has been reduced to a fraction of their original areas.²⁰⁶

THE FRAUDULENT NATURE OF TREATIES

Of the treaties signed from 1851 to 1868, there are common threads of fraud that run through all of them. First is the signature problem. The government did not understand the nature of Native American societies and their governance structures. The Cheyenne had what was thought to be the most sophisticated system of governance of any of the Plains Indians. The procedures associated with the Council of 44 required a meeting of all the members to

decide about issues of importance to the whole Nation. These procedures were never followed when the United States negotiated treaties with the Cheyenne or, for that matter, with any other Native Nations. The government in many cases just chose people to sign, or only those who attended treaty councils signed.²⁰⁷ These treaties had relatively small numbers of signatures compared to the number of bands and people whose homelands were being taken.

Second, verbal agreements were made at treaty councils. These verbal agreements were never written into the treaties. The treaties remained as they had been written by treaty writers in Washington. The Native American signers by tradition expected that verbal agreements would be honored. The government representatives expected that only the written agreements would be honored.²⁰⁸ Language and education were also problems. The treaties were written in technical language that even the interpreters likely did not understand. Some of the interpreters could translate the language, but many were functionally illiterate. Elbridge Gerry was a trader and interpreter. How many of the interpreters understood the treaty boundaries with technical terms like “latitude” and “longitude”? Lack of education among the white invader population was common. The 1861 Fort Wise Treaty was widely repudiated because the Native American signers said they did not know what they were signing.²⁰⁹

Third, the government representatives were given pre-written treaties with various monetary amounts for annuities and other goods. These amounts were fraudulent and arbitrary as a matter of law because the treaties were “negotiated” before Congress appropriated the funding. The funding did not always meet the treaty stipulations. According to the 1868 Report of the Commissioner of Indian Affairs, the Indian Service was not adequately funded historically.²¹⁰ As of March 3, 1869, no money had been appropriated for the 1867/1868 treaties because of disagreements between the House and Senate. Representative Sidney Clarke of Kansas said that the treaty process was “a fraud from beginning to end, manipulated, directed, and controlled by Indian agents and superintendents, who made treaties in Washington, took them to Indian Country, and went through the farce of having them signed by these Indians.”²¹¹ There was a fundamental lack of understanding about what was promised in the treaties and when those promises would be fulfilled. Some treaties were ratified in as little as six months. Some were not ratified for as long as a year or two. In addition to Congress’s failure to adequately fund the treaty agreements, Indian treaty commissioners paid as little for the land as possible with little thought to the land’s actual value.²¹²

The Native Americans did not understand the delays in the distribution of annuities. They were waiting for the annuities promised in the treaties, which were often slow to arrive. S.E. Browne testified before the Doolittle Commission on the Condition of the Indians, that “one of the main difficulties with the Indians comes from the delay in paying the Indians their annuities according to the law.”²¹³ The 1865 Treaty annuities were not distributed until the 1867 Medicine Lodge Creek council.²¹⁴ In a letter from Wynkoop to Colonel Tappan, Wynkoop states that the current hostilities with the Cheyenne along the Saline could have been prevented if the promised annuities had continued to be provided. The Cheyenne would have been content

to receive arms and ammunition for hunting had Wynkoop been allowed to supply them.²¹⁵ William Bent testified that most troubles came from aggressions perpetrated on Indians by whites and annuity goods fraud.²¹⁶ The failure of the government to appropriate money for annuities caused starvation. Starving the Indians as a method of colonial control assured that the Indians remained dependent on the government. This strategy often had the opposite effect and caused the young men to go out raiding.

There were many problems associated with the distribution of annuity goods. The House of Representatives delayed and, in some cases, reduced the recommended appropriations for the Indian Service. Agents often did not anticipate the needs of the Indians. Their population counts were not always accurate. They did not understand the needs and tastes of the Indians. Fraud, mismanagement, and profiteering caused shortages in the amount of goods that reached the Indians.²¹⁷

Kit Carson also testified that aggressions by whites caused the trouble with Indians. He also thought that the authorities were determined to start an Indian war to keep troops from being sent to the Potomac.²¹⁸ The bad behavior of white men living in or passing through Indian Country caused more problems with treaties than Indians did. Rumors also were circulated by those who wanted to keep freight rates high.²¹⁹ The army's position was that the one branch of government should not be feeding the Indians while the other was fighting them.²²⁰

Fourth, the treaties themselves were contracts of adhesion. A contract of adhesion is entered into by parties of unequal bargaining power. Usually, the stronger party dictates the contract terms. This is like an insurance policy or lease agreement in today's understanding. The courts generally find in favor of the weaker party in disputes about the terms of the contract. Initially the courts found in favor of the Native Americans. However, this interpretation is changing. The courts have ignored the treaty terms. One glaring example of this problem is the land promised to the Cheyenne and Arapaho in the 1865 treaty, as was discussed previously.

THE INDIAN CLAIMS COMMISSION

The Indian Claims Commission was a feeble attempt to compensate Indian tribes for the land they lost through various treaties negotiated and ratified in the mid-1800s. The appraisers' valuations were low compared to the valuations of land the government had been using at the time the treaties were made, and to the rate the government was charging white invaders for the land they purchased. A Mr. Holbrook, a qualified appraiser who appeared as witness for the Cheyenne and Arapaho, valued the land at \$.80 per acre. The going rate for land in 1864 and 1865 was \$1.25 per acre. Homer Hoyt, an expert for the government, valued the grazing land at \$.02 per acre, relying mainly upon the sales of interests in certain Spanish land grants. The Spanish land grant properties would have been poorer grazing than some of the land on the eastern plains of Colorado since there would have been more precipitation on the eastern

plains. The Spanish land grant properties would have been poorer grazing than some of the land on the eastern plains of Colorado, since there would have been more precipitation in other areas of the eastern plains. Holbrook examined 8,645 land transfers in Colorado from 1860 to 1865. Of those transactions, 558 were for 160 acres or more. The average price was \$2.72 per acre; applying a discount of \$.91 per acre for improvements left a value of \$1.81 per acre. Cropland had a value of \$2.50 per acre, but Hoyt appraised farmlands at only \$1.00 per acre. Surprisingly, he valued unimproved farmlands along streams that could be used for irrigation at only \$.20 per acre. This valuation was clearly fraudulently low, considering the accessibility of water and the fertility of bottom land. The Indian Claims Commission valued the entire tract of land at \$23,500,000, based on property values in effect on October 14, 1865. This was an arbitrary date. The number of acres was 51,210,000. Thus, the settlement amount was based on a land valuation of approximately \$.46 per acre. In addition to the paltry value per acre, no interest was paid for time elapsed from the taking of the land until the final settlement. The settlement also stipulated that no further claims could be brought.²²¹

The land in question was—under dubious circumstances—“ceded,” for which payment in the form of annuities was pathetic. The value, quality, and substance of annuities were degraded by dishonest agents and inadequate appropriations by Congress. The commission was window dressing for the continuing fraud against the former inhabitants of Colorado. In addition to the low valuation of the land, there was no compensation for the theft and slaughter of buffalo and other animals that were used for food, clothing, and shelter by the Indian peoples. There was no compensation for the destruction of Indian dwellings and stores of food, thus causing starvation, especially in the winter months. There was no restitution for the many lives lost in attacks on Indian villages. Many of the actions of the military in the killing of Indian people and destruction of their homes and food stores would be considered war crimes and crimes against humanity under current international law.

William Payne, one of the attorneys for the Cheyenne and Arapaho, did not keep adequate records of his time spent on the case. He merely estimated that from 1948 to November 1965 he had devoted 25% of his productive time, or 12,000 hours, exclusively to working on the two cases. He estimated his travel at 10,198 miles from 1948 to 1960 and was away from his Washington office 223 days. From 1960 to 1965, he estimated travel of 54,000 miles between Oklahoma and Billings, Montana, and was away from his office 137 days.²²² It seems inconceivable that billing based upon these kinds of estimates was ethical.

CONCLUSION

Because of the wide expanses of Native American homelands, limiting the discussion of frauds to the colonial boundaries of Colorado is difficult. The only treaty signed in Colorado was the 1861 Fort Wise Treaty, negotiated out on the eastern plains. Treaties that were signed

outside Colorado's current boundaries had profound effects on the Indigenous peoples whose homelands included Colorado, especially the 1867 and 1868 treaties. When the Cheyenne, Arapaho, Kiowa, and Comanche were removed to Indian Territory after the 1867 Medicine Lodge and the 1868 Fort Laramie Treaties, the fraud did not stop. Self-serving agents and broken treaties on the part of the government continued on a "business as usual" footing.

The frauds committed in Colorado were part of a larger system of grift within the Indian Service, which was filled with men hoping to make their fortunes by cheating the Indians. The Indian Office was generally staffed by men who were political cronies, knowing little or nothing of—and having no desire to learn—about Indians. Evans was one of those men. His hysteria can be followed through his Indian affairs correspondence. His only interest was in promoting business in Colorado and enriching himself through the development of railroads. Evans's mismanagement of Indians affairs was largely responsible for the unrest among the white population of Colorado. The atmosphere of fear and hatred he created through his public proclamations was at least partially responsible for the massacre at Sand Creek. Even Byers, publisher of *The Rocky Mountain News*, blamed Evans's mismanagement for the war that ensued after the Sand Creek Massacre.²²³ Evans eventually affiliated himself with Jay Gould, the infamous robber baron.²²⁴

Still, sometimes there is a little justice. John Evans, whose Indian administration was inept and highly corrupt, died in 1897, \$300,000 in debt. His widow was responsible for administering the resolution of the debts.²²⁵ John Chivington died virtually penniless.²²⁶

ENDNOTES

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