



# **THE SISSETON WAHPETON OYATE of the LAKE TRAVERSE RESERVATION – Maintaining Our Boundaries**

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Reservation

# Dakota, Lakota, Nakota

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- Three dialects, forming the Nation, organized as the Seven Council Fires – Oceti Sakowin
- The Seven Council Fires: Sissetonwan, Wahpetonwan, Mdewakantonwan, Wahpekute (Dakota); Tetonwan (Lakota); Ihanktonwan and Ihanktonwanai (Nakota)
- Dakota also known as the Isanti or People of the Knife

# Contact with United States: Treaty Relationship and Land Loss

- Sept. 23<sup>rd</sup>, 1805 to construct Fort Snelling near present day Minneapolis/St. Paul – payment provision left blank, filled in by U.S. Senate on April 13, 1808 \$2,000 or goods/merchandise
- 1825 Treaty of Prairie du Chien (1<sup>st</sup>): Dakota, Chippewa, Sac and Fox, Menominee, Ioway, Winnebago, Ottawa, and Potawatomi – acknowledging tribal territories & age-old tradition of asking permission to cross boundaries
- 1830 Treaty at Prairie du Chien (4<sup>th</sup>) – ceded 2 mil acres for \$2,000
- 1851, Treaty of Traverse des Sioux – ceded 25 mil acres with payment of \$1,665,000 as U.S. designated, after this the Sisseton-Wahpeton only had two 150 mile strips of land on either side of the Minnesota River, there was promised another tract of land to be set aside for future home
- 1858 Treaty purported to cede northern strip along Minnesota River, only 9 signatories and divide southern strip into 80 acre allotments

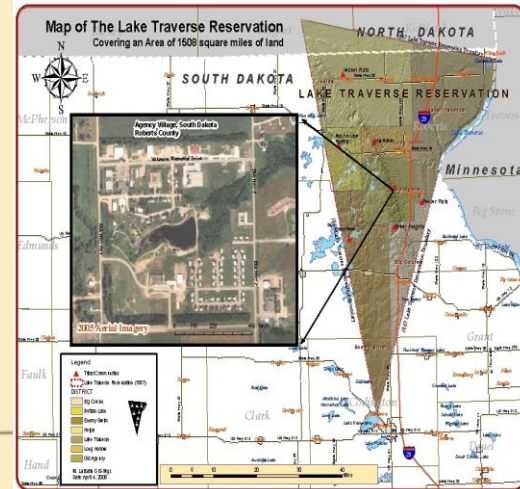
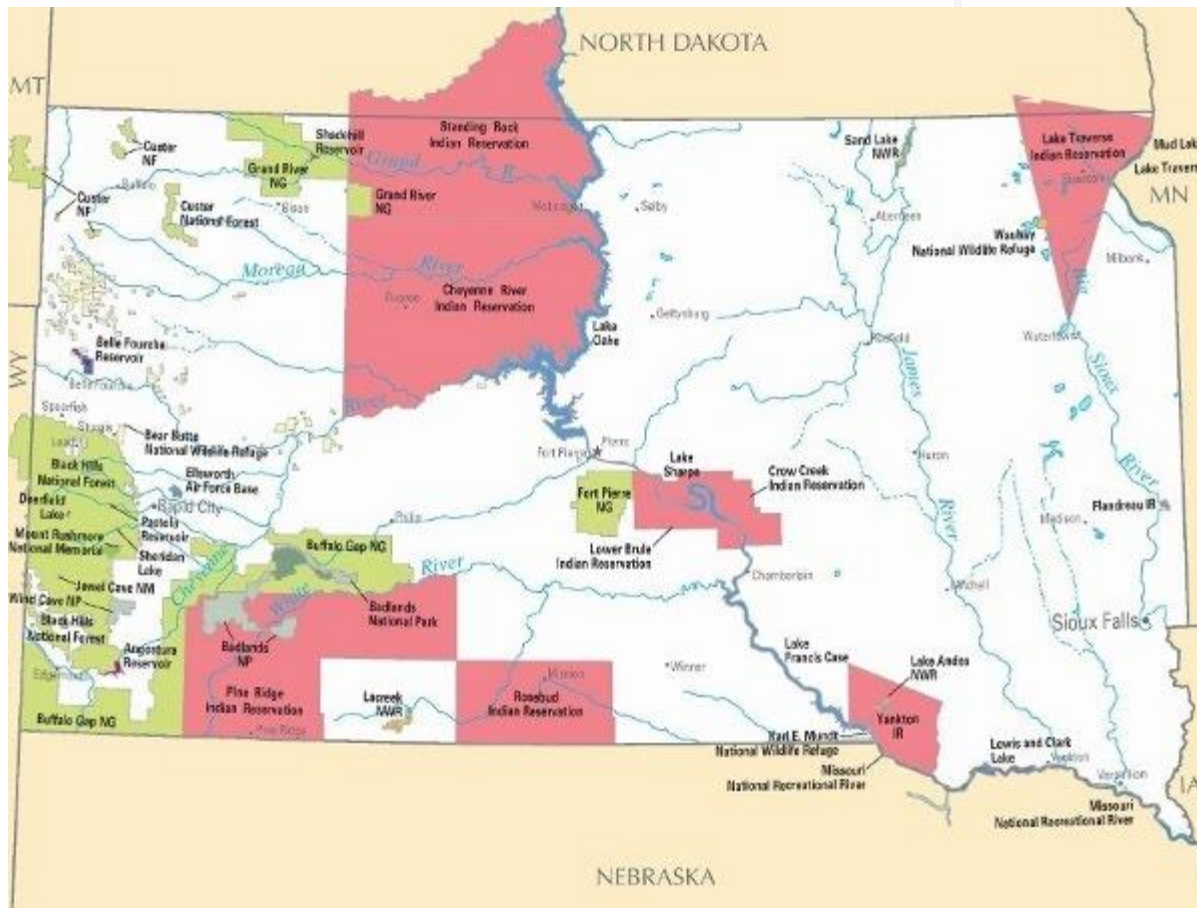
# U.S.-Dakota War of 1862

- Minnesota admitted to union May 11, 1858 and state officials pushed for removal of the Dakota Tribes and sought to take reserved lands.
- Summer of 1862 - Dakota were starving, annuities and rations were late and forbidden to leave reservation or be declared hostile
- A few young men tried to take eggs off a porch and shots were exchanged. The U.S. and state immediately responded. The warriors defended the women and children. In the end, both sides had losses with Minnesota settlers and Dakota people killed. Over 400 Dakota men were held for an impromptu military tribunal to establish guilt
- Dec. 26<sup>th</sup>, 1862 before a crowd of 3,000, the 38 Dakota men were hung on a specially built platform in the largest mass execution in the history of the United States
- Exile legislation passed in the U.S. Congress

# Lake Traverse Reservation

- 1867 Treaty Article III establishing a Lake Traverse Reservation in Dakota Territory (1861-1889). South Dakota and North Dakota admitted to the union in 1889. 22 years after the Lake Traverse Reservation established.
- 1867 Treaty in Article IV established Devil's Lake (Spirit Lake) Sioux Reservation.
- Apr. 22, 1889, DW Diggs, banker, on behalf of local White community sent letter to Secretary of Interior to negotiate opening of the Lake Traverse Reservation.
- May 22, 1889 article published in Minneapolis Tribune with DW Diggs as stenographer on Chief Gabriel Renville and his Headmen's statements on considering opening the reservation after the US government paid what was due to them
- Nov. 1889, three commissioners appointed to negotiate: DW Diggs, Charles Maxwell, Chief Land Division DOI, and Eliphalet Whittlesey Secretary of the Board of Indian Commissioners
- The agreement was ratified by Congress in 1891.

# LOCATION OF LAKE TRAVERSE RESERVATION



# DeCoteau v. District County Court, 420 U.S. 425 (1975)

- Domestic relations case where mother challenged the state's authority to seize her two boys in Sisseton, SD within the Lake Traverse Reservation boundaries and use the state district county court to place them in foster homes.
- Joined with 8<sup>th</sup> Cir. Case in favor of existence of reservation U.S. ex rel. Feather v. Erickson
- In a 6-3 decision, the Court held that the 1891 Act had terminated the reservation by agreement of the Tribe.
- Tribal jurisdiction limited to remaining trust allotments
- The Sisseton Wahpeton Oyate of the Lake Traverse Reservation continues to claim jurisdiction up to original 1867 boundaries

# Majority Opinion 6-3: *DeCoteau* decision

Justice Stewart starts Part I with statistics on non-Indian population and land ownership within reservation

Part II Allotment policy and states spokesmen for the tribe were quoted in local press – picks statements that were translated “in regard to opening the reservation” – Minneapolis Tribune May 22, 1889 with D.W. Diggs acting as stenographer for the discussion

Dec negotiation described position on 3 issues by Tribal leaders: 1) allotments to be 160 acres, 2) make good on scouts’ claim, and 3) adequate sale price of \$2.50 per acre as sum certain price

Court - Three points: 1) sale of all unallotted lands for sum certain, 2) Agreement negotiated could not be altered, and 3) Sisseton Wahpeton bill included with other Tribes in Congress where other Tribes sold only a portion of unallotted lands

# Majority Opinion continued

- “The Agreement’s language, adopted by majority vote of the tribe was precisely suited to this purpose [termination of reservation]: ‘The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby cede, sell, relinquish and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said bands of Indians as aforesaid remaining after the allotments and additional allotments provided for in article four of this agreement shall have been made.’”
- (Magic words “cede, sell, relinquish and convey” plus “sum certain” as changing reservation status in later cases)
- (Interpreters were necessary to negotiate the opening of the reservation for allotment – the Agreement was not written by the Dakota leaders.)

# Dissenting Opinion 3 Justices - *DeCoteau* decision

Justice Douglas with Brennan and Thurgood Marshall: “The so-called jurisdictional acts took place in ‘Indian country’ over which the federal regime has exclusive jurisdiction until and unless the United States relinquishes it, and that has not been done here.”

“...under the authority of the General Allotment Act of Feb. 18, 1887...[t]he Indians undertook to sell all their claim ‘to all unallotted lands within the limits of the reservation.’ 26 Stat. 1036. **There is not a word to suggest that the boundaries of reservation were altered.**” (emphasis added in bold)

“While doubtful clauses in agreements with Indians are resolved in favor of the Indians, there is no doubtful language in the Agreement or in the 1891 Act.”

“The attitude of Congress, of the Department of the Interior (under which the Bureau of Indian Affairs functions), and of the tribe is that the jurisdiction of the tribe extends throughout the territory of the reservation as described in the Treaty.”

Cites to the August 26, 1966 Tribal Constitution approved by the U.S. Secretary of the Interior which states: ‘The jurisdiction of the Sisseton-Wahpeton Sioux Tribe shall extend to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867.’

# U.S. Federal Law after *DeCoteau* (1975) decision

- After 1975, the U.S. Congress did pass a federal law regarding the “Lake Traverse Reservation” and Congress has power in Indian Affairs that overrides U.S. Supreme Court decisions. See *U.S. v. Lara* (2004)(upholding federal *Duro* fix) and *Haaland v. Brackeen* (2023) (restating Congress’ plenary power to enact the Indian Child Welfare Act of 1978)
- See Trade and Tariff Act of 1984, Pub. L. No. 98-513, 98 Stat. 2411, 2411 (**1984**) (“[T]he provisions of this Act shall govern the right to inherit trust or restricted land located within such States and within the original exterior boundaries of the Lake Traverse Indian Reservation . . . as described in article III of the Treaty of February 19, 1867 (15 Stat. 505).”). Note that the preamble to the law states: “Pertaining to the inheritance of trust or restricted land on the Lake Traverse Indian Reservation, North Dakota and South Dakota, and for other purposes.” *Id.*
- See U.S. Dept of the Interior announcement of cooperative agreement with the Sisseton Wahpeton Oyate of the Lake Traverse Reservation dated **2014**:  
<https://www.bia.gov/as-ia/opa/online-press-release/interior-signs-cooperative-agreement-sisseton-wahpeton-oyate-next>

# Clarifying Lake Traverse Reservation Status

- *McGirt v. Oklahoma* (2020) involved the assertion of Oklahoma that the Muscogee Creek Nation Reservation no longer existed after opening the reservation for allotment. The Court majority held the reservation was intact. For changing a reservation, the rule is – only Congress by express language can change the status of a reservation as disestablished or diminished.
- Recall - the dissent in the *DeCoteau* decision stated there was not one word about changing the Lake Traverse Reservation or its boundaries in the allotment act of 1891 for the Sisseton Wahpeton.
- The rule of law is the standard and should be fairly applied to the Lake Traverse Reservation.

# **Conclusion : Permanent Homelands = Lake Traverse Reservation**

- The Sisseton and Wahpeton Bands of Dakota have faced centuries of corruption and falsification aimed at taking their homelands.
- The laws of the Sisseton Wahpeton Oyate (SWO) continue to assert territorial jurisdiction over the Tribe's homelands as defined in the 1867 Treaty and never changed by the U.S. Congress.
- South Dakota as a sister government should join with the SWO to uphold the rule of law and the permanent homelands of the Sisseton Wahpeton Oyate of the Lake Traverse Reservation.
- This is a matter of justice, fairness and doing what is right.