

ATTACHMENT A

THE WELL-FOUNDED BASIS OF THE GOOD FAITH BELIEF ON THE PART OF CHASE IRON EYES AND ON THE PART OF HIS FELLOW LAKOTA SIOUX TRIBAL MEMBERS WHO WERE ARRESTED ON FEBRUARY 1st OF 2017 THAT THE AREA OF LAND ON WHICH THEY WERE ARRESTED AND CHARGED WITH “TRESPASSING” ON THAT DATE WAS “SOVEREIGN TREATY TERRITORY” OF THE SIOUX TRIBE OF INDIANS ON WHICH LAND THEY, AS MEMBERS OF THE SIOUX TRIBE OF INDIANS, HAD A LEGAL “TREATY RIGHT” TO BE – AND ON WHICH TO ENGAGE IN A LAKOTA RELIGIOUS CEREMONY

Executive Summary

The Cannonball River in North Dakota is the United State Government-recognized northern boundary of The Standing Rock Sioux Reservation. And the high prairie grassland area immediately to the north of The Cannonball River, northward all the way up to The Heart River, was, in 1851, indisputably part of The Great Sioux Nation whose territory (covering over 60 million acres - including this specific area) was expressly-acknowledged by the United States Government, in the Fort Laramie Treaty of 1851, to be “The Sovereign Territory of The Sioux Tribe of Indians” to the exclusion of all other parties - both governmental and private – as of 1851. <https://lastrealindians.com/remembering-a-river-the-cannonball-river-in-history-by-dakota-wind/>

This is a vitally important fact - because the specific half-acre of land on which Chase Iron Eyes and his fellow officially-enrolled Native American members of The Sioux Tribe of Indians were arrested by Morton County Deputy Sheriff Dion Bitz on February 1st of 2017 for “trespassing” is clearly within *this* specific area of land.

As is made clear in the following Memorandum, this area of 1851-Treaty-Acknowledged “Sovereign Territory of The Sioux Tribe of Indians” was *never* “ceded” to the United States Government, and – though this fact was not realized by non-treaty-educated Morton County Law Enforcement Officials, by non-treaty-educated Morton County Prosecutorial Officials, by non-treaty-educated North Dakota State Officials...or even by non-Treaty-educated United States Government Officials - this specific land area on which Chase Iron Eyes and his fellow Sioux Tribal Members were arrested on February 1st of 2017 for “trespassing” lies within The 1851 Treaty-Recognized Sovereign Territory of The Sioux Tribe of Indians.

Though many Non-Native non-lawyer laypeople incorrectly *assume* that the provisions of The Treaty of Fort Laramie of 1851 were somehow “modified”, or even “annulled”, by some specific language in Article 2 of The Treaty of Fort Laramie *of 1868* – or were somehow lawfully “overridden” by The Act of Congress of February 28th of 1877...or, perhaps, pursuant to “The Doctrine of Discovery - as is clearly explained in the Memorandum that follows, each of these theories is plainly untrue. And this is no longer subject to good faith dispute.

And, while it has been argued that there is some degree of “ambiguity” involved as to the meaning of one specific provision of Article 2 of The Treaty of 1868, it is an undisputed principle of American Law that any such “ambiguity” in any U.S. Government Treaty signed with American Indians MUST be resolved in favor of the American Indian People who were parties to that treaty.

Dispositive legal and historical authority establishing the truth of each of these statements is set forth below.

**Attachment A
30-2017-CR-00223**

THE FACTS

Subsequent to the enactment of the two Treaties of Fort Laramie, the first signed in 1851 and the second signed in 1868, the United States Congress passed “The Act of Congress of February 28th of 1877.” This Act of 1877 is widely misunderstood, by Non-Native People, to have “abrogated” all *previously-existing* Indian Treaties, thereby having authorized the United States Government to renounce all such earlier Treaties on the part of the United States Government - including the two prior Treaties of Fort Laramie signed with The Sioux Tribe of Indians. That mistaken principle is, further, mistakenly understood by many to have “legally authorized” the seizure, by the United States Government, of not only of The Black Hills of South Dakota, but all of the other “Treaty Territory of The Sioux Tribe of Indians”, such Territory including the area of land between The Cannonball River and The Heart River. However, as will be shown below:

(1) Even on its face, **NO** language contained in The Act of Congress of February 28th of 1877 specifically applied to “The 1851 Treaty Territory of The Sioux Tribe of Indians” that was previously expressly *recognized* – not “granted” - by the United States Government, to be “The Sovereign Territory of The Sioux Tribe of Indians” by The Treaties of Fort Laramie of 1851 and 1868;

(2) The Act of Congress of February 28th of 1877 was *fraudulently* grounded, by a simple majority of the members of the U.S. Congress in office at that time, as operating to simply “ratify” some entirely *NON Existent* “Agreement” between The Sioux Tribe of Indians and the United States Government, which Act was enacted during a particularly virulently anti-Native American period in American history (the “*fraudulent*” nature of which assertion on the part of U.S. Congress was expressly recognized – and renounced - by The United States Supreme Court in 1980.¹

(3) This Act of Congress of February 28th of 1877 was – and remains today - clearly Unconstitutional... for a number specific reasons. A number of these reasons were expressly identified by The United States Supreme Court in 1980 in The Supreme Courts 8-to-1 opinion (with only Justice William Rhenquist dissenting) expressly and authoritatively ruling that The Act of Congress of February 28th of 1877 had NO LEGAL EFFECT WHATSOEVER as passing title to any portion of “The Treaty Territory of The Sioux Tribe of Indians” to the United States Government. See, United States v. The Sioux Tribe of Indians, 448 U.S. 371 (1980), at pp.411-424 (attached as Exhibit A.) This principle clearly applied *not only* to The Black Hills in South Dakota *but also to the specific 1851 Treaty Territory located between The Cannonball River and The Heart River* in North Dakota... within which land area lies the specific land area on which Chase Iron Eyes and the fellow members of his Sioux Tribe of Indians were arrested for “trespassing” on February 1st of 2017.

¹ One previous attempt, made in 1882, to have the Sioux Indians agree, by “treaty” to “allot” their lands had been made, but that attempt had never even been attempted to be “ratified” by Congress. Agreement with the Sioux of Various Tribes of 1882-1883, H.R. Ex. Doc. 68, 47¹ Congress, 2d, Sess.

In events that followed the passage by Congress of this U.S. Supreme Court-acknowledgedly unconstitutional Act of February 28th of 1877, the only other significant piece of federal legislation conceivably affecting the legal status of The Sioux Tribe of Indians' Treaty Territory recognized in The Treaties of Fort Laramie of 1851 and 1868 took place twelve years later, in 1889. This was the passage by Congress of The Dawes Act (The Act of March 2, 1889, 25 Stat., 888)

While both The Act of Congress of February 28th of 1877 and The Dawes Act of 1889 had some impact on Sioux lands *inside* Sioux Reservations, neither Act even purported to have ANY legal affect whatsoever on "The 1851 Treaty Territory of The Sioux Tribe of Indians " that lay *outside* of the Sioux Reservations.

Finally – and this is extremely important for all Non-Native People to understand, in light of the fact that this fact has been so persistently *mythologized* in American Anglo-European fiction...and, resultantly, in major motion pictures during the 1940's and 50's - throughout the relatively short period of actual "warfare" between the United States Government and The Sioux Tribe of Indians, the Sioux Tribe of Indians was *never* "conquered" in war, and, thus, *never* lost any of their 1851 Sovereign Territory pursuant to the application of the legal doctrine of "military conquest." (See, Law Review Article.)

Thus, whether by mere inadvertence on the part of the United States Government, or, perhaps, by simple lack of adequately careful legal thinking, the "Sovereign status" of "The 1851 Treaty Territory of The Sioux Tribe of Indians" that lies between The Cannonball River and The Heart River in the State of North Dakota is still *entirely operative* –and the land area on which Chase Iron Eyes and the fellow members of his tribe were arrested for "trespassing" on February 1st of 2017 is incontestably *within* this area.

Many of the cited references set forth this Memo below constitute the Official Transcripts of Proceedings Before The United States Indian Claims Commission, recoding official decisions made mostly in 1970 (at 23 ICC 358) and in 1978 (at 42 ICC 214, in "Docket 74"). The relevant portions of these official citations are set forth in this Memo below **in bold letters**.

This Indian Claims Commission is a unique United States Court expressly created by the United States Congress to *authoritatively* adjudicate Indian Treaty Land Claims. Congress itself gave this Commission the exclusive official U.S. Government authority to *authoritatively* interpret the effect of all Indian Treaties.

The Sioux Tribe of Indians, As of 1851, Possessed The Undisputed Right to Exercise Full & Unqualified Sovereignty Within The Specific Boundaries Expressly Recognized By The United States Government in The Fort Laramie Treaty of 1851

This Treaty of Ft. Laramie of 1851, (11 Stats., p. 749, Sept. 17, 1851) was the first major treaty signed between the United States Government and The Great Sioux Nation.² The reality of their "sovereignty" at that time,

2 The Great Sioux Nation was –and still is - a confederacy of seven indigenous peoples, the Oceti Sakowin (Seven Council Fires), which peoples (the Oyate) the United States Government once unlawfully confined to just fractional portions of The Great Sioux Nation's original territory on "reservations" within the United States' states of North and South Dakota, including the Standing Rock Sioux Reservation adjacent to where the State of North Dakota charges the conduct of Defendant Iron Eyes and his fellow Sioux Tribal Members took place on February 1st of 2017. See, Lakota People's Law Project, *History of the Seven Council Fires*

<http://www.olc.edu/ljarding/webfolder/index.php?dir=Intro%20to%20Social%20Science/&file=Lakota%20People%27s%20Law/o20Project.pdf>

; Walker, James, Lakota Society: Divisions of

within a specifically-identified area of land, was explicitly acknowledged by General Sanborn (the Official U.S. Government Spokesman for the U.S. Indian Peace Commission of 1851 and the Lead U.S. Negotiator for the 1851 Treaty) statement (iccv23p358 - page 363):

*“General Sanborn told the Sioux during the negotiations: “We shut the whites out of **a country which will be your own** •• : ••.” (Emphasis added) Pl. E.--<. 6, p. 103.”*

This fact was expressly confirmed by the U.S. Indian Claims Commission at iccv42p214 – footnote 1):

*“The Commission has previously determined (1) that under the Treaty of Fort Laramie of September 17, 1851, the “**Sioux or Dakcotoh Nation**” possessed recognized title to a large tract of land in North and South Dakota, Montana, Wyoming, and Nebraska, 21 Ind. Cl. CoDmI. 371 (1969), amending 15 Ind. Cl. Cotmn. 575 (1965); (2) that the “Sioux or Dakcotoh Nation,” as that term was used in the 1851 Fort Laramie Treaty, consisted of the Teton (Docket 74) and Yankton (Docket 332-C) divisions of Sioux, and that the Tetons possessed an undivided 93 percent interest in the Sioux Fort Laramie land and the Yankton Sioux an undivided 7 percent interest in that land, 24 Ind. Cl. Connn. 147 (1970), as modified by 41 Ind. Cl. Comm. 160 (1977); (3) that the Teton and Yanktonais Sioux (Docket 74) had aboriginal title to a tract of land in North and South Dakota east of the Missouri River, 23 Ind. Cl. Comm. 419 (1970); and (4) that the value, on February 24, 1869, of the Sioux lands east of the Missouri River was \$20,895,000, and of the Sioux lands west of the Missouri and outside the Great Sioux Reservation was \$24,790,000, 38 Ind. Cl. Comm. 469 (1976).*

The Treaty of Fort Laramie of 1868 Did Not Abrogate or Annul The Sioux Indian Tribe’s Sovereignty Over Any of Its 1851 Treaty-Recognized Sioux Territory

First: The Treaty of Fort Laramie of 1868 did NOT abrogate any provision of The Treaty of Fort Laramie of 1851; nor did it alter or diminish, in any way, the sovereign authority of The Sioux Tribe of Indians over any of their Treaty-Recognized Territory

Many Non-Native people *incorrectly* – but, perhaps understandably - misread Article 2 of The 1868 Treaty of Fort Laramie to “abrogate” or “annul” the sovereignty of The Sioux Tribe of Indians over lands previously identified in the earlier 1851 Treaty of Fort Laramie as their “Treaty-Recognized Territory.” While it is true that, IF a person were to read *no further than* just the first few lines of Article 2 of The 1868 Treaty, that provision might ***at first*** appear to abrogate or annul the title to such “Treaty Territory” of The Sioux Tribe of Indians that had been expressly recognized by the U.S. Government in the *earlier* 1851 Treaty of Fort Laramie. This is because Article 2 of the later 1868 Treaty says that The 1868 Treaty abrogates or annuls *all claims or right in and to* any portion of the United States or Territories.” However, Article 2 of The Treaty of 1868, by its express wording, then go on to CLEARLY state that Article 2 applies ONLY to any earlier treaty that, as of

the Lakotas, University of Nebraska Press (1982); South Dakota Dept. of Education, Office of Indian Education, *Oceti Sakowin: Essential Understandings and Standards* (2012) (<https://indianeducation.sd.gov/documents/OcetiSakowinEUS.pdf>). What is referred to today as “The Standing Rock Sioux Tribe” is composed of the people of several of the Oceti Sakowin, including the Yanktonai (the Ihanktonwana and Hunkpatina, Dakota speaking nations who settled primarily in communities in the North Dakota area of the Standing Rock Sioux Reservation), and the Hunkpapa and the Sihapapa (two of the seven subdivisions of the Lakota nation). Standing Rock Sioux Tribe, *History* (<http://standingrock.org/history/>). Some minor treaties had been signed earlier.

1868, imposed, at THAT time (on November 6th of 1868), an obligation on the part of the U.S. government to *furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty.*” And, as of November 6th of 1868, The Treaty of Fort Laramie of 1851 imposed NO such “obligation” on the United States Government - because the short ten-year such obligation that had been in Article 7 of The Treaty of 1851 had clearly expired five years earlier.

ALSO, what was being abrogated and annulled, even in such earlier Treaties that had been signed by the United States was NOT ANY PREVIOUSLY-RECOGNIZED LAND OWNERSHIP of any Indian Tribe, but, *instead*, ONLY the provision in any such earlier treaty pursuant to which the United States Government had agreed to *furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty.*

To wit:

The Treaty of Fort Laramie of 1868, in Article 2, provides: “*..henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.*” And

Article 17 of The Treaty of Fort Laramie of 1868 “**hereinafter provided**” that The Treaty of 1868 “*shall have the effect, and shall be construed as **abrogating and annulling** all treaties and agreements heretofore entered into between the respective parties hereto, so far as such treaties and agreements **obligate** (in the present tense) the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, **but no further.***” (Emphasis supplied.)

Therefore, it is clear that, while Title 7 of The Treaty of Fort Laramie of 1851 did, at one time, include *such* an “obligation” on the part of the United States Government to *provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty*, that Title 7 provision of The Treaty of 1851 expressly limited that obligation on the part of the United States Government to just 10 years... which “obligation” had, therefore, **as of September 17, 1861**, plainly expired.

The Treaty of Fort Laramie of 1851, Article 7, provided: “*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, 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.*”

And *none* of the Presidents of The United States between 1851 and 1868 (Millard Fillmore, between 1851 and 1853; Franklin Pierce, between 1853 and 1857; James Buchanan, between 1858 and 1861, Abraham Lincoln, between 1861 and 1865; or Andrew Johnson, between 1865 and 1869) had, in fact, exercised his “discretion” to *continue* this post-1861 completely discretionary “consideration” *for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, OR for their maintenance and the improvement of their moral and social customs.*

Therefore, The Treaty of Fort Laramie of 1851, as of the signing of The Treaty of Fort Laramie of 1868, on November 6th of 1868, was NOT a Treaty that, at that time, would “obligate [in the *present tense*] the United States” to do anything further. Indeed, even if the earlier “obligation” on the part of the United States Government to *provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty* HAD BEEN “discretionally” voluntarily continued by any President, for the potential period of only five additional years, until September 17th of 1868...(which no President had done), even any such completely discretionary “continuance” of any such agreement would have ALSO expired, before the November 6th, 1868 signing of The Treaty of Fort Laramie of 1868.

Moreover, even if one were to argue that there appears to be some degree of ambiguity as to whether the specific language cited in Article 2 of The 1868 Treaty of Fort Laramie was referring only to earlier Indian Treaties that, **as of November 6th of 1868**, contained a then-operative such “obligation of the United States Government to *provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty*”, the “**hereinafter provided**” language of Article 17 of The 1868 Treaty makes it clear that the ONLY aspect of even any such “prior Treaty” with Indians that DID, as of November 6th of 1868, impose *such* an operative “obligation” to *provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty*, was to be abrogated or nullified by Article 2 of The 1868 Treaty only “so far as” such treaties and agreements obligate [in the present tense] the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, but no further.”

Thirdly, it is an incontrovertible principle of American law that any ambiguity in any treaty signed between the United States and any Indian Tribe must be resolved in the tribes' favor” (pursuant to the Canons of Indian Treaty Construction expressly declared to be controlling upon all American Courts by the Indian Claims Commission.) See, for example:

From iccv42p214 – page 218: “The language of the treaty is ambiguous concerning the intention of the parties. Although the language we have quoted from Article II, while it appears to be language of cession, the final phrase, “except as hereinafter provided, ”controls the sentence ... so there is considerable doubt as to its meaning.”... [Moreover], “in Article XI [of the 1868 Treaty], the only article in the treaty which uses the word ‘consideration’, the Sioux agree to “relinquish all right to occupy permanently the territory outside their reservation, it is unclear whether the surrender of a’ right to permanently occupy land’ is the same as a “cession” of that land. [page 219]

This is further emphasized in ICCv42p214, at page 216, by the following statement of the Indian Claims Commission:

“In an attempt to ascertain the intention of the parties, we shall first examine the language of the treaty. In this task, we shall be guided by the principle that Indian treaties are to be interpreted in the sense in which they would naturally be understood by the Indians, and that any ambiguity is to be resolved in favor of the Indians. (Underlining supplied.) *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970). This rule is an application of the international law treaty-interpretation principle, *contra proferentem*, often determined in regards to indigenous peoples by their oral history. (See, Dunbar-Ortiz, Roxanne, The Great Sioux Nation, *supra*; 126; Neihardt, John G., Black Elk Speaks, (SUNY Press 2008).) Clearly, the Sioux Nation did not understand the provisions of the 1868 Treaty as granting the United States any right to unilaterally abrogate the Treaty.”

Furthermore, any abrogation' of the earlier 1851 Treaty, whether express or implied, by Article 2 of the 1868 Treaty, would merely place the parties, the Sioux Tribe of Indians and the United States Government, *back* in the same position that they were in prior to the signing of The Treaty of 1851. For those reasons, the abrogation of the 1851 Treaty would not result in the loss of any territory of the Great Sioux Nation. It would put The Sioux Tribe of Indians in the same position, with regard to their sovereignty over their "Sioux Territory", that they were in *prior to their signing of either* Treaty of Fort Laramie³ - and, *prior to their signing of The 1851 Treaty of Fort Laramie*, no party disputed the "sovereignty" of The Sioux Tribe of Indians over their Territory.

The 1868 Treaty (which some assert resulted in a "cession" of Sioux Territory) did not involve any "land cessions" AT ALL

As was expressly acknowledged by General Sanborn, the Principal U.S. Negotiator of the 1868 Treaty: No land is to be taken without Sioux consent ICCv23p358 - Page 364

*"Thus the Sioux were given the exclusive right to hunt in the Article 16 lands. This was seen as a right given to them, but it was **assumed** that they would cede their hunting lands to the United States **only when all the Sioux decided to become agriculturalists or when the game supply was exhausted.***

Furthermore, General Sanborn emphasized that both parties were of the clear common understanding that The Treaty of Fort Laramie of 1868 was a treaty of peace - not a treaty of "cession"; and that the Sioux were entirely unaware of any cessions (iccv42p214 – page 225:

*"Later in the negotiations, in order to allay the suspicion of some of the Sioux, General Sanborn, the spokesman for the Commission, stated that the Government understood "when you tell us that you don't want to receive any presents, that **you don't wish to be thought of as selling your land. We are not going to give you these goods in exchange for any land--we give them to you to help you along.**" Id. at p. 137.*

*"From this recitation, **it is clear that**, based on the representation of the United States negotiators, **the Indians cannot have regarded the 1868 treaty as a treaty of cession. Nowhere in the history leading up to the treaty or in the treaty negotiations themselves is there any indication that the United States was seeking a land cession or that the Sioux were willing to consent to one. On the contrary, the evidence is overwhelming that the Sioux would never have signed the treaty had they thought they were ceding any land to the United States. Since, in our opinion, the Sioux intended no cession, they could only regard any benefits accruing to the tribe as payment for the keeping of the peace under article XI of the 1868 treaty.***

Abrogation of a treaty by a State under the doctrine of "changed circumstances": *rebus sic stantibus*, requires a fundamental change in circumstances that occurred since the making of the treaty which could not have been foreseen at the time of the making of that Treaty. Vienna Convention, art. Further, the doctrine requires that the abrogating party have approached the other party in a good faith effort to settle the problem. Vienna Convention, arts. 65, 66. See also, *International Law Commission Report* (1966), 2 Y.B. INT'L L. COMM'N, U.N. Doc. A/CN.4/SER.A/1966/Add.1

Therefore, there has *never* been ANY doubt whatsoever on the part of the exclusive legal authority within the United States Government to interpret such treaties (the Indian Claims Commission) that The Treaty of Fort Laramie of 1868 had absolutely NO effect whatsoever of ceding or relinquishing to the United States Government ANY of the Territory of The Sioux Tribe of Indians expressly recognized in The Treaty of Fort Laramie of 1851 by the United States Government.

Finally: Though The Treaty of Fort Laramie of 1868 Created “The Great Sioux Reservation”, the Treaty of Fort Laramie of 1868 did NOT restrict Sioux Indians to that Reservation

Reservation occupancy was “optional”: iccv23p358 - page 363:

*“Thus a reservation, described in Article 2 of the Treaty, was set aside for **those who desired to abandon hunting and take up agriculture**. The United States was confident that **those who did not immediately take up farming** would do so eventually. Thus General Sanborn told the Sioux during the negotiations: “We only ask of you to remain at peace, to settle down and commence farming in the country designated for your home when you abandon hunting, and surrender such lands as no longer afford you any game.” Pl. Ex. 6, p. 96.*

The Act of Congress of February 28th of 1877 Did Not Negate or Diminish to Any Degree the Sovereignty of The Sioux Tribe of Indians Over Their Territory

The Act of Congress most often cited purportedly negating the sovereignty of The Sioux Tribe of Indians over this land area is The Act of Congress of February 28th of 1877. And the provision of this Act that is most often cited to this effect is the following:

“..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 [of 1868] is hereby abrogated.”

This provision of The Act of Congress of February 28th of 1877 did NOT impact , in any way, the provisions of The Treaty of Fort Laramie of 1851 - because the “Article 16 lands” referred to in The Act of 1877 did NOT include any of the “Treaty Land” identified in The Treaty of Fort Laramie of 1851

ICCV23p358-page 365 – the Eastern Boundary of the “Article 16 Unceded Land was NOT the Missouri river: *“We think it clear that the eastern boundary of the lands described in Article 16 could not have been intended to be the Missouri River.*

The only formerly “ceded land” was formerly Crow territory – page 366:

*“The peculiar language of Article 16 which provided that the land “shall be held and considered to be unceded Indian territory” indicates that **the drafters were referring to land which had already been ceded to the United States but would now be ‘considered’ to be unceded**. This described the Crow lands to which cessions were obtained by the same negotiators. It could not describe the land of the Gros Ventres, Arikaras and Mandans for which no cession had at that time been obtained.*

The legal doctrine governing the “abrogation of Indian rights” must be explicit. But The Act of 1877 does not ever mention The 1851 Treaty. (See Judicial Review of Indian Treaty Abrogation: “As Long as Water Flows, or Grass Grows upon the Earth—How Long a Time is That?”, 63 Cal. L. Review 601 [1975].)

The Act of 1877's language refers ONLY to The 1868 Treaty as "said treaty" - this must be taken to mean that The Act of 1877 did not even seek to apply the stated measures against the entirely different 1851 Treaty.

Neither The Treaty of Fort Laramie of 1851, nor The Treaty of Fort Laramie of 1868, provided for any "Right of Abrogation" to any party to that treaty. Indeed, Article XII of The Treaty of Fort Laramie of 1868 expressly provided and agreed to the requirement that ANY alteration of the status of any land of The Sioux Tribe of Indians would have to be expressly agreed to pursuant to a "signed agreement of three-fourths of the adult male members of the tribe" before it could be given any effect. This express provision was, indeed, explicitly cited and quoted by The United States Supreme Court in its 1980 8-to-1 decision rendered in the case of United States v. The Sioux Tribe of Indians, 448 U.S. 371, at p.376.

Treaties are governed by principles of international law and grounded on the fundamental principle of *pacta sunt servanda*: that treaties must be obeyed. (See, Vienna Convention on the Law of Treaties ("Vienna Convention"), art. 26 (May 23, 1969), 1155 U.N.T.S. 331,339 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith.") This principle has been recently reiterated as recently as 2013 by our United State Government as a signer of the UN Declaration on the Rights of Indigenous People ⁴ regarding treaties signed with indigenous peoples. (UN DRIP, art. 37, sec. 1 ("Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements, and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements.") Even when provisions of a treaty allow a party to unilaterally withdraw from the agreement, the withdrawing state is not released from obligations that occurred, nor excused from violations that existed prior to the date that its withdrawal took effect. (See, Vienna Convention, art. 70(1), 1155 U.N.T.S. at 349.)

Unilateral withdrawal, as was attempted by Congress through its enactment of The Act of Congress of February 28th of 1877, from treaties that did not contain a specific exit provision constitute a breach of the treaty, particularly where treaty provisions expressly foreclose unilateral withdrawal by the parties - "absolute and undisturbed use and occupation," "no persons ... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article" (1868 Treaty, art. II (emphasis supplied); Vienna Convention, art. 56 (an agreement "which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal"); see, e.g., U.N. Human Rights Commission, 53rd Sess., General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, General Comment No. 26(61), at 102 ,rs 1-5, U.N. Doc. N53/40 (1998).

Neither the sovereign Great Sioux Nation, nor the Standing Rock Sioux Tribe, nor any of the various tribes of The Sioux People has ever accepted or acceded to the purported exercise of "plenary power" on the part of the United States Government over them as a matter of law, and do not do so now. They, of course, are aware of the asserted *de facto* exercise of plenary power over them by the United States Government as an occupying colonial power. But that does not - and has never - made that exercise of such mere brute colonial power lawful, nor has this raw exercise of such power provided any basis, at law, for the simple seizing of territory or its purported exercise of jurisdiction over the territory or natural resources

of The Great Sioux Nation, of The Standing Rock Sioux Tribe, or of its peoples.

Beyond the issue of the literal “scope” and “coverage” of the wording of The Act of Congress of 1877, The Act was (and remains today) unconstitutional

The Unconstitutional nature of the attempted taking by The Act of 1877 in light of the 5th Amendment

- The United States Government refused to pay any compensation for any of the “Sovereign Territory” of The Sioux Tribe of Indians for over 100 years between 1877 and 1977;
- The unconstitutional usurpation of Presidential Treaty-Making (or Un-making) authority: Pursuant to Article II, Section 2 of the U.S. Constitution, the authority to make treaties resides exclusively with the President of The United States - with two-thirds of the members of the U.S. Senate’s “consenting.” The Congress – even BOTH HOUSES of The Congress acting together, as they did in passing The Act of 1877 – have NO Constitutional authority whatsoever to “set aside” any Treaty made by a former President. Any such withdrawal from a Treaty must, *Constitutionally*, be undertaken by The President of The United States – and then *consented to* by two-thirds of The Senate. No such action can be *Constitutionally* undertaken simply by a majority vote of Congress.
- A long-standing principle of Constitutional law is that an “unconstitutional” law is void *ab initio* – that is, such a law must be treated as if it never existed. All provisions set forth in such a law must be deemed to have been of no effect.
- The U.S. Supreme Court, in 1980, morally pressed to find some colorable rationale for the *continued* “seizure” of The Black Hills by the United States Government - asserted, in 1980, that... even though The Act of 1877’s attempt to “take” The Black Hills in 1877 did NOT effectuate any “transfer of title” to any portion of Indian land, from The Sioux Nation of Indians to the United States Government ... this Act of 1877 could be treated, by The Court, *as if* The Act of Congress of 1877 had authorized the Federal Executive Branch of the United States Government to, “*ex post facto*”, exercise its Power of Eminent Domain over The Black Hills – so long as the United States Government were to proffer “the fair market value” for that portion of The Sioux Territory that the government sought to “seize” in that case.
- This rationale was –and is - unsupportable for a number of reasons. These include, but are not limited to:
 - Lack of Any Public Purpose: The seizure - through the purported *ex post facto* exercise on the part of the United States Government of its Power of Eminent Domain - of the Sioux Indian Territory of The Black Hills (which the 1877 Act was inferred by The Court, in 1980, to have *implicitly* authorized the U.S. Government to exercise over 100 years after the enactment of that Act) was not undertaken to “further” *any* remotely conceivable “public purpose.” Rather, the Black Hills Territory was intended to be simply sold, by the United States Government, to White gold miners and settlers.
 - Lack of Due Process: For any legitimate exercise of its Power of Eminent Domain, the U.S. Government is obligated to provide to the Land Owner at issue some *current* due process. This was not done in the case of The Black Hills until over 100 years later.

- Historical Relevance: There was not so much as even a *mention* of the Government's Power of Eminent Domain in the language –or in the legislative history- of The Act of 1877, nor during any of its surrounding events, prior to the Court's 1980 ruling. Nor was there any focus on eminent domain in the benchmark Marshall Trilogy rulings. So, there is no colorable argument that U.S. Congress that passed The Act of 1877 was, in any way whatsoever, even considering the "eminent domain" powers of the government.

Congress, for many years, denied all Native Americans, both individually and collectively as a Tribe, any access to the U.S. court system. Eventually, an exception was crafted that allowed Native American People access to a "Special Court", (specifically, the Indian Claims Commission created under The U.S. Court of Claims). However, the ICC limited the form of "legal relief" that would be available to any Indian person or Indian Tribe complaining of the unlawful nature of any "seizure of *Indian Land*" by the U.S. Government strictly to "*financial* compensation", NOT to the "return" to them of any LAND – no matter HOW "unlawfully" that land had been "taken" from them by the U.S. Government. In short, the only "choices" that were allowed to Indian persons or to Indian Tribes, when confronted with an even unquestionably "unlawful" seizure of their land by the U.S. Government, were: "live with it" or "take money printed by The U.S. Government IN EXCHANGE FOR that land" – even if their land had been "seized" by the U.S. Government solely to GIVE it to private gold miners, White cattlemen – or to oil corporations.

However, as to the specific area of land on which Chase Iron Eyes and the fellow members of his Sioux Tribe of Indians were arrested and charged with "trespassing" on February 1st of 2017, there has never been the slightest pretense that the United States Government has ever proffered ANY amount of "just compensation" for this area of the Territory of The Sioux Nation of Indians between The Cannonball River and The Heart River.

The Act of Congress of February 28th of 1877 was based upon a transparent "fraud"

The Act of 1877 *purported* to "ratify" some alleged prior "agreement" between the United States Government and The Sioux Tribe of Indians to "cede" some portion of their land to The United States Government. But no such "agreement" was ever consented to by a majority of the members of The Sioux Tribe of Indians – much less the 3/4ths of the adult male members of The Sioux Tribe the *written consent of* whom was clearly *required* by Article 12 of The Treaty of Fort Laramie of 1868 as a condition precedent to any proposed "transfer of title" of any of the Tribe's Territory to anyone.

The Act of 1877 refers to the agreement with "said Indians," concealing the fact that only 10% of the members of the tribe were involved in any such "agreement."

The 1868 Treaty (Article 12) required the consent of 3/4^{ths} of the male members of The Sioux Tribe of Indians before any concessions of reservation land could be given effect. However, in this case, only at most, 10% of tribal members concurred. And even those who did agree, did so under severe coercion, being threatened with a loss of vital rations unless they signed the "agreement." From the ICCv42p214 – page 310:

"Our findings in Docket 74-B reveal that, after the discovery of gold in the Black Hills portion of the Sioux reservation, the United States, in 1875, attempted to purchase the hills. The Sioux refused to sell. In November 1875, in an attempt to force the Sioux to sell, President Grant decided that the United States would no longer fulfill its obligation under the 1868 treaty to keep whites out of the Sioux reservation. He ordered that the Army

be removed from the Black Hills and no longer oppose miners attempting to enter the hills. Not satisfied with this action the Grant Administration created a crisis by ordering those Sioux who were hunting outside the reservation to return to the Sioux reservation by January 31, 1876, or risk being declared hostile and treated accordingly by the military. Although most of the off-reservation Sioux were hunting legally with the consent of their agent, and the severity of the winter made it impossible for them to return before the spring, on February 1, 1876, the Secretary of the Interior notified the Secretary of War that his order had not been complied with and that the Sioux were being turned over to the Army for appropriate military action.

“In the spring of 1876 the Army commenced military operations against the Sioux. It was during this campaign that Colonel Custer's Seventh Cavalry was defeated at the Little Big Horn. In response to the Custer disaster Congress attached a rider to an appropriation act which provided that the Sioux were to receive no further rations until they ceded the Black Hills to the United States. Since most of the Sioux had been disarmed and were thus unable to hunt, the Congressional action meant that unless the Sioux surrendered the Black Hills they would be permitted to starve.

In evaluating the claims that eventually reached the Supreme Court in its 1980 Sioux Tribe of Indians ruling, the Court of Claims, referring to the events above, said: *“The duplicity of President Grant’s course and the duress practiced on the starving Sioux, speak for themselves. A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history.”* United States v. Sioux Tribe of Indians, 448 U.S. 371, at p. 388, citing 207 U.S. Court of Claims, at 241, 518 F. 2d, at 1302.

According to the Act of 1877, no *future* treaties would be legal- NOT that ALL *prior* treaties were a nullity.

Beyond these points, even if The Act of 1877 were purported by someone to have been legal – rather than having been based upon a “fraud” and its having been “unconstitutional”, the Act's purported “abrogation” literally extended ONLY to “hunting” - not to other usufructuary rights. The full panoply of usufructuary rights and the treatment of the same is covered by a legal doctrine called “The Reserved Rights Doctrine.” This doctrine provides that unless such usufructuary rights are explicitly extinguished, all such rights remain with the tribe and tribal members. These are often referred to collectively as “the right to hunt, fish and gather;” but they actually include the right to engage in ALL traditional activities that, at the time of the treaty, were part of leading the ordinary Indian life.

Whether or not The Treaty of Fort Laramie of 1868 was valid enforceable after passage of The Act of February 28th of 1877, the area of land on which Chase Iron Eyes and his fellow Lakota Sioux Indians were arrested for “trespassing” on February 1st of 2017 was indisputably within the territorial boundaries and sovereign jurisdiction of The Great Sioux Nation, as those lands were explicitly identified in the Treaty of Fort Laramie of 1851 - and was, therefore, NOT within the territory or area of jurisdiction of The State of North Dakota. There were some minor treaties between the United States and the Sioux in 1805, 1815, 1816, 1825, 1851, 1858, 1865, and 1868. But, in none of these prior minor treaties did The Sioux Tribe of Indians agree to turn over criminal jurisdiction to the United States, and certainly not to the State of North Dakota. The Dakota territory lacked jurisdiction in The Sovereign Indian Territory of the Oceti Sakowin in 1883 ⁵ and it still lacks such jurisdiction to this day.

5 *Ex Parte Kan-Gi-Shun-Ca*, 109 U.S. 556 (1883).

