The Fort Laramie Treaty of 1868 and the Sioux: Is the United States Honoring the Agreements it Made?

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Abstract

In the Fort Laramie Treaty of 1868, the United States attempted to force the Sioux to assimilate into American society by making them become farmers. Over the next twenty-one years, the federal government forced the Sioux to cede land from the Great Sioux Reservation to the United States for farming, ranching, and mining for its American settlers. To accomplish this purpose the 1868 Fort Laramie Treaty needed to be changed. Treaty making ended in 1871, and the U.S. government now enacted changes to treaties through Congress. Using Congressional legislation the United States altered the 1868 Fort Laramie Treaty and agreed to provide the Sioux a safe food and water supply. Among all of the changes to the 1868 Fort Laramie Treaty, the United States never altered Article 12 of the treaty, which requires three-fourths of the adult male members of the Sioux to approve any land cessions by the Sioux. The three-fourths approval by the Sioux adult males never occurred as only at the most only ten percent of the Sioux adult males ever approved the cessions of land. The United States forced the terms, and the land cessions of the modified 1868 Fort Laramie Treaty on the Sioux anyway. Because of the violation of the treaty by the United States, there exists controversy between the Sioux and the U.S. over the ownership of the land that was taken by the United States. This article will show the unilateral process of building the Dakota Access Pipeline through the area of the Great Sioux Reservation is a violation of the modified 1868 Fort Laramie Treaty the United States made through legislation in 1889.

Introduction

By the 1850s, moving Indians west was no longer an option so the United States had to create new language in treaties, and with the Fort Laramie Treaty of 1851 established the Great Sioux Reservation within the larger traditional homelands of the Sioux. The Fort Laramie Treaties of 1851 and 1868 were examples of the new language the U.S. adopted for treaties, which was more forceful and made demands of the Sioux to assimilate into American society and abandon their traditional ways. Treaties were now documents of forced assimilation. The Fort Laramie Treaty of 1868 stipulated that the Sioux and other tribes on the Plains stay at peace with one another and the United States, so Americans could safely cross the Plains. In return for moving the Sioux onto reservations, the United States agreed to protect the food and water supply of the Sioux from the Fort Laramie Treaty of 1868. Congress modified this treaty three times between the years of 1876 to 1889, to take more land from the Sioux and agreed to protect the food and water supply of the Sioux. Because the U.S. government ignores the modifications of the 1868 Fort Laramie Treaty today, the Standing Rock Sioux face threatening issues today, from the Dakota Access and Keystone, Pipelines.

The Original Fort Laramie Treaty of 1868

In his book The Lakotas and the Black Hills: The Struggle for Sacred Ground, Jeffery Ostler points out that the Fort Laramie Treaty of 1868 had stronger language in it than previous treaties. Before 1868, the United States agreed to terms in treaties that included: money, provisions and many times provided a place for the Indians to relocate as payment for the land cessions. The treaties before 1868 did not include forced assimilation into American society. The 1868 Fort Laramie Treaty was more forceful, requiring the Sioux to become farmers and assimilate into American society. The 1868 Treaty contained some very
complex language as well that the Sioux leaders later complained was not explained very clearly by the Americans as to not arouse suspicion among the Sioux leaders.¹

Article 1 of the Fort Laramie Treaty of 1868 required peace among the tribes living on the Plains as well and peace with the United States. The U.S. agreed to protect the Sioux in Article 1 from Americans that did damage to the Sioux or any part of the Great Sioux Reservation:

*If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon 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.* .²

Article 2 of the Treaty of 1868 changes the boundaries of the Great Sioux Reservation. The United States made the reservation smaller and moved the Sioux farther east. The reasoning for the eastward movement was to take away access to the prime buffalo herds that occupied the area and encourage the Sioux to become farmers.³ New boundaries were established and sterner language over hunting off the reservation were stricter than stated in the 1851 Fort Laramie Treaty. The Sioux could only leave the reservation if chasing a large herd of buffalo and had to return immediately to the reservation after making the kill.⁴

One article in the 1868 Fort Laramie Treaty that is not in the previous 1851 Fort Laramie Treaty is Article 12. Today Article 12 appears in the modified 1868 treaty untouched by Congressional legislation:

*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 of force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood of constructed in such manner as to deprive, without his consent, any individual member of the tribe his rights to any track of land selected by him as provided in Article 6 of this treaty.* ⁵

The article is very controversial, as today the United States has taken land away from the Sioux since this treaty went into effect without three-fourths of the adult male population of the Sioux giving consent or signing any agreement. Hence, any land that the United States seized was in violation of the 1868 Fort Laramie Treaty: therefore, any agreement that took away land should be invalid.

The 1868 Fort Laramie Treaty was only the beginning of issues to develop over the next 21 years. In his book *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History*, Colin G. Calloway observed that one of the generals who had worked to secure the signatures of Indian Chiefs on the 1868 Fort Laramie Treaty complained about the way the United States was dealing with Indian tribes. Brevet Major General Alfred H. Terry suggested a new way to deal with the Indians:

*In the opinion of this Commission, the time has come when the Government should cease to recognize the Indian tribes as “domestic dependent nations” except so far as it may be required to recognize them*
as such by existing treaties and by treaties made but not yet ratified; that hereafter all Indian should be considered and held to be individually subject to the laws of the United States, except where and while it is otherwise provided in said treaties: and that they should be entitled to the same protections from said laws as other persons owing allegiance to the Government enjoy.6

Terry would eventually see his suggestion become law as in 1871 the United States passed legislation that ended the era of making treaties with Indian tribes. The legislation only ended making treaties with Indian tribes in the future. Treaties negotiated with tribes prior to 1871 would still be honored. The Indian Appropriations Act of 1871 made Indians subject to the laws of the United States and at the same time made Indians wards of the United States government meaning the U.S. government would now assume full responsibility for the needs of Indians.

**The Indian Appropriations Act of 1871**

On March 3, 1871, the United States Congress passed the Indian Appropriations Act of 1871. Within this act, there is contained a rider that became **U.S. Code Title 25: Indian Tribes 25 U.S.C. Section 71:**

*Future Treaties with Indian Tribes*

**Sec. 71. No Indian nation of tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.**7

From 1871 on Congress would enact many new agreements with Indian tribes. The United States promised it would honor all Treaties made before 1871. The United States would alter The Fort Laramie Treaty of 1868 three times under this Act. However, this Act would also have other ramifications as it also defined how the U.S. government would view Indians from 1871 to today.8 The Act made taking land away from Indians easier.

The article by George William Rice 25 U.S.C. Sec 71: The End of Indian sovereignty or a Self-Limitation of Contractual Ability? appearing in the American Indian Law Review in 1977, explains the various aspects of U.S. Code 25 Section 71. Rice explores the subsequent legal ramifications, litigation, new questions and perspectives of the relationship between the United States and American Indian tribes. Section 71 affected the 1868 Fort Laramie Treaty in both a positive and negative way for the Sioux. Before 1871, 666 treaties with American Indian tribes appear in the Federal statutes. Many legal experts have claimed that the United States used treaties with Indian tribes along with the normal legislative process within the government of the United States. Treaties altered by Congress were a way to interfere in internal tribal government and affairs without consent of the tribes in question. Section 71 led to several court cases that led to legal decisions defining how much control the United States would have over economic and military dependence and, created doctrines including conquest, wardship, and plenary powers the United States would have over Indian tribes.9

The United States used several court cases, involving Section 71 to have the tribes cede land to the United States government. Issues surrounding these court cases raised jurisdiction questions regarding the newly
ceded land and questions on which sovereign powers a tribe could exercise. In the Federal district court case *United States v. Blackfeet Tribe*, the interpretation by the court on Section 71 was “an Indian tribe could exercise only those sovereign powers the United States allowed.”\(^{10}\) Another court case, *United States v. Kagama*, is the first case the Federal Courts used Section 71 to deny Indian political control over Indian land.\(^{11}\) The U.S. government applied the *Kagama* decision in the *DeCoteau v. District County Court* argued in 1875, involving the Sisseton-Wahpeton Sioux in South Dakota, to cede reservation land to the United States. Legal questions arose from this land cession as to who had jurisdiction over the newly ceded reservation land.\(^{12}\) Rice said,

> While the case created an agreement made after 1871 between the Sisseton-Wahpeton Sioux ceding reservation land to the United States government. A jurisdictional question arose regarding the ceded land and the validity of the agreement-making process was unanimously approved. While the case involved the question of state jurisdiction over the ceded portion of the reservation, the distinction in the use of Section 71 may have arisen over the political question of jurisdiction claimed by the Sisseton-Wahpeton Sioux.\(^{13}\)

### Questions Surrounding Jurisdiction and the Dakota Access Pipeline

Use of Section 71 creates this question: Who has jurisdiction over Indian sovereignty under Section 71? The question of jurisdiction over Indian sovereignty exists today through the controversy over the Dakota Access Pipeline. The Standing Rock Sioux lay claim to the unceded land of the 1851 Fort Laramie Treaty that is located between the Cannon Ball and Heart Rivers. Article 16 of the Fort Laramie Treaty of 1868 states that the Sioux would have claim to all land north of the North Platte River and east of the Big Horn Mountains as unceded territory and no Americans could enter this territory.\(^{14}\) Under the ruling of the *DeCoteau* case from 1875, there is a legal question as to who has jurisdiction over what the Standing Rock Sioux call the unceded territory from the 1851 Fort Laramie treaty. Article 5 of the Fort Laramie Treaty of 1851 established as the original boundary for the Great Sioux Reservation the Heart River in North Dakota.\(^{15}\) Article 16 of the 1868 Fort Laramie Treaty states that all land north of the North Platte River shall be considered unceded territory from the 1851 Fort Laramie Treaty, for use only by the Sioux and no Americans shall enter the unceded territory. Article 12 of the Fort Laramie Treaty of 1868, states that three-fourths of the adult male population of the Sioux must agree to any land cessions to the United States.\(^{16}\) Article 12 has not been abrogated out of the Fort Laramie Treaty of 1868 by any Congressional legislation. The Act of February 28, 1877 did make changes that raise questions as to who has jurisdiction over ceded land and the sovereignty of the Sioux. Article 1 of the Act of February 28, 1877 states: the Heart River boundary of the Great Sioux Reservation will be moved east to the Cannon Ball River. The Act further states that the Sioux will “hereby relinquish and cede the land to the United States, and Article 16 of the 1868 of Fort Laramie is hereby abrogated.”\(^{17}\) The Sioux believe they still have a claim to the land between the Heart and Cannon Ball Rivers as unceded territory from the Fort Laramie Treaty of 1851, because three-fourths of the adult males did not approve the land cession to the United States as required by Article 12 of the 1868 Fort Laramie Treaty. Therefore, the Sioux believe today that the Act of February 28, 1877 is invalid. According to Rice, Indian people feel this way about treaties:

> Perhaps the basic contention of American Indians today with respect to their treaty rights is not that treaties cannot be repealed, abrogated, or suspended (by either party), but that they are not given the dignity which such legal agreements should receive. The United States is deadly serious when speaking
of the land cessions made by the tribes under the treaties. When it comes to fulfilling the duties of the United States under the same treaties, however, we are told that the treaties are either old, have been superseded by subsequent legislation or that they do not mean what they plainly say.18

**The Acts of August 15, 1876 (19 Statute 176, 192) and February 28, 1877 (19 Statute 254)**

Because of the discovery of gold in the Black Hills in 1874, by 1875 the United States wanted the Sioux to cede or sell the Black Hills to the United States. However, the Sioux refused to give up the Black Hills. Many issues arose over the next two years as the United States eventually created and attached two riders on two different Indian Appropriations Acts in 1876 and 1877.

On September 20, 1875, Iowa Senator William B. Allison formed the Allison Commission and met in council with representatives of the Sioux, Northern Cheyenne, and Arapaho Nations in an attempt to purchase the Black Hills. During the meetings with Red Cloud, Allison offered $6 million dollars for the Black Hills. Red Cloud replied that $6 million dollars was not enough as the Black Hills were worth seven generations of his people. American Horse, a Sioux Chief later explained what seven generations meant, that the Sioux needed compensation for seven hundred years for the sale of the Black Hills, as that was their worth to Red Cloud and the Sioux.19

According to Ostler, because of the difficulty in obtaining the required three-fourths of the adult male population of the Sioux as stated in Article 12 of the 1868 Fort Laramie Treaty, the United States placed a rider on the Indian Appropriations Act of August 15, 1876 (19 Stat. 176, 192).20 The rider simply stated that until the Sioux signed an agreement with the United States to sell the Black Hills, the U.S. would withhold all food rations to the tribe. This tactic was and still is referred to by the Sioux the as the “sell or starve” rider created by the U.S. government.21 The Indian Appropriations Act of August 15, 1876 (19 Stat. 176, 192) provides funding contingent upon acquiescence of approval saying:

For this amount, for subsistence, including the Yankton Sioux and Poncas, and the purposes of their civilizations, one million dollars: Provided, That none of the said Sioux Indians shall be paid to any band thereof while said band is engaged in hostilities against the white people; and hereafter there shall be no appropriation made for the substance of said Indians, unless they shall first agree to relinquish (Relinquishment of righters under eleventh and sixteenth articles of Treaty of 1868 by Sioux Indians, June 23, 1875 (See annual report, 1875, p. 179) all right to claim any country outside of the boundaries of the permanent reservation established by the treaty of eighteen hundred and sixty-eight . . .22

The following year the U.S. wrote and attached as a rider the Act of February 28, 1877 (19 Stat. 254). Congress attached the rider to the Indian Appropriations Bill of 1877 written to fulfill the treaty and other obligations of the United States to the Indian Nations for 1877. The rider is a modification of the 1868 Fort Laramie Treaty. Article 1 of the rider states:

*Where the western boundary of the Great Sioux Reservation is to begin at the 103rd 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 to the said 103rd meridian;*
By Congressional action, the United States changed a treaty and created a land cession from the Sioux, moving the western boundary of the Great Sioux Reservation from the 104th meridian to the 103rd meridian and changed the eastern boundary of the Great Sioux Reservation from the Heart River to the Cannon Ball River. Today the Sioux believe this Congressional Act to be invalid, as three-fourths of the adult male population of the Great Sioux Reservation did not approve this act. The Sioux believe that the territory between the Heart and Cannon Ball Rivers still to be the unceded territory from the 1851 Fort Laramie Treaty and that no Americans can enter this area as it is to be utilized by the Sioux only.

Many of the articles of the 1868 Fort Laramie Treaty remained intact but some became modified and new articles were added. Congress modified Article 8:

The provisions of the said treaty of 1868, except as herein modified, shall continue in full force, and, with 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 be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life.24

The U.S agreed to protect the food and water supply of the Sioux, and kept certain parts of the 1868 Fort Laramie Treaty intact. However, Article 12 of the 1868 Fort Laramie Treaty was not changed or taken out by the Act of February 28, 1877, which requires three-fourths of the adult male tribal members to sign and agree to cede any land from the reservations. Only ten percent of the required signatures of the adult male Sioux signed the agreement to cede the land in question, but the United States forced the agreement on the Sioux anyway.25

The Act of February 28, 1877 (19 Stat. 254) applies to the situation at Standing Rock as the Sioux did not agree to certain land cessions because three-fourths of the adult males did not sign or agree to the terms of the Act. Red Cloud rejected the $6 million dollars offered for the Black Hills by Senator Allison. The only monetary terms that were acceptable to Red Cloud was that his people needed to be cared for over the next seven hundred years if the U.S took the Black Hills. The United States took away the Black Hills and the $6 million dollars Senator Allison offered was never paid. Therefore, it is conceivable that Red Cloud’s demand that the United States take of the Sioux needs for seven hundred years is the binding statement that allowed the United States to make a land cession of the Black Hills from the Sioux.26 The Act of 1877 became law and the United States took the Black Hills away from the Sioux.

Several court cases apply to this issue, according to Calloway. The U.S. Supreme Court case US v Winans in 1905 stipulates that treaty interpretations be in language that Indians would have understood at the
time of the writing of the treaty and applies to Standing Rock in that the only acceptable terms to selling
the Black Hills were seven hundred years of care for the Sioux. The Act of February 28, 1877 (19 Stat.
254) was enforced with no compensation for the loss of the Black Hills. Only Red Cloud’s demand of
seven hundred years of the U.S. taking care of the Sioux was acceptable to the Sioux, and should be
recognized as a part of the Act of February 28, 1877 (19 Stat. 254), as it was passed.

Ostler observes that in 1923, Ralph Case filed a claim for the Sioux before the Claims Commission for
proper compensation for the loss of the Black Hills. Case figured the Sioux were owed by the United
States government $750 million dollars compensation for the taking of the Black Hills. On June 1, 1942,
the Claims Commission finally heard the arguments for the $750 million dollars claim by Case in behalf
of the Sioux. The Claims Commission denied the claim based off the 1903 Lone Wolfe vs Hitchcock in
which, the U.S. Supreme Court ruled that the three-fourths requirement in the 1867 Medicine Lodge
Treaty was invalid. The ruling stated that Congress had placed “plenary power” over Indian Affairs and
had the right to abrogate treaties. In 1952, Case filed another claim in behalf of the Sioux for $57 million
dollars for the loss of the Black Hills before the Indian Claims Commission. In 1954, the ICC again
rejected the claim stating in their findings the U.S. government had not acted dishonorably. In 1958,
the ICC agreed to a rehearing but did not give a ruling in the case for the Black Hills by the Sioux until
February 1974. The ICC ruled that the Fort Laramie Treaty of 1868 had been violated and the Sioux were
entitled to compensation for the loss of the Black Hills. The case eventually was argued before the United
States Supreme court in 1979 and the Court ruled in favor of the Sioux awarding the Sioux $102 million
dollars stating the principals in the post-Lone Wolf decisions upheld the 1868 Fort Laramie Treaty and
the three-fourths agreement by the Sioux adult male requirement is valid. The Justice Department in
appealed the case but in 1980 the U.S. Supreme Court refused to hear the case. Three weeks after the
ruling by the U.S. Supreme Court, the Sioux rejected the money, and instead asked for the Black Hills to
be returned to the Sioux along with $11 billion dollars for damages.

The Indian Appropriations Act of March 2, 1889

The Act of March 2, 1889 (25 Stat. 888) broke up what was left of The Great Sioux Reservation into
the seven smaller reservations of today, Pine Ridge, Rosebud, Brule, Standing Rock, Cheyenne River,
and Crow Creek, in South Dakota, and the Flandreau band in Nebraska. The Act of 1889 has 30 sections
and reinforces some of the original 1868 Fort Laramie Treaty. It forced new rules and smaller reservations
for the Sioux to live on. The Act also called for the enforcement of the Dawes Act by 1890 on the new
smaller reservations. The first seven sections of the act define the new boundaries of the seven new
reservations and contains stern language and stipulations about staying within the new boundaries.
However, four of the sections bring new protections to the Sioux that the United States government is
ignoring today at Standing Rock.

The 1889 Act changed many agreements from the original Fort Laramie Treaty of 1868. Section 13 of
the 1889 Act offers more annuities and rations for an unspecified length of time for the Sioux who were
now residing in smaller reservations. Section 14 is something new concerning water rights. Water rights
are of the upmost importance to the Standing Rock Sioux, and Section 14 in the Act of March 2, 1889
(25 Stat. 888), states:

In cases of the use of water for irrigation is necessary to render the lands
within any Indian reservation created by this act available for
agricultural purposes, the Secretary of the Interior be, and he is hereby,
authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such Indian reservation created by this act; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.35

Riparian water laws are:

The right of the owner of the land forming the bank of a river or stream to use water from the waterway for use on the land, such as for drinking water or irrigation. Consistent in these questions is that a riparian owner may not act to deny riparian rights to the owner of downstream properties along the waterway, meaning the water may not be dammed and channeled away from its natural course.36

The United States acknowledges the Standing Rock Sioux and the other newly formed Sioux Reservations have the right to use the water on, near and adjoining the reservations that this Act created. The United States wrote into this Act that it would protect the water source (the Missouri River is the eastern boundary of the Standing Rock Reservation) of each reservation by not allowing another riparian proprietor upstream of the reservation.37 The United States under Section 14 of the Act of March 2, 1889 (25 Stat. 888), today is not honoring this commitment to the Standing Rock Sioux concerning protection of the water supply the United States clearly states it will do. The U.S. said it would not allow another riparian proprietor upstream of the Sioux and not allow any alterations or threat to the water supply of the Sioux.

Although most of the Fort Laramie Treaty of 1868 was changed by the Indian Appropriations Act of 1889, Section 19 of the left several articles from the original 1868 Treaty intact by saying:

All the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty eight, and the agreement with the same approved February twenty-eighth, eighteen hundred and seventy-seven, not in conflict, with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this to the contrary notwithstanding.38

By leaving other provisions and Article 12 of the 1868 Fort Laramie Treaty intact, the treaty remained legally binding, and the three-fourths approval of the adult male population of the Sioux reservations had to be acquired. A few did sign this agreement but not three-fourths of the adult males. Realistically speaking the Act of March 2, 1889 (25 Stat. 888), was never approved by the Sioux so the Act of 1889 should be invalid, as stated in Section 19 of the Act.

Section 21 states that the Great Sioux Reservation will be broken up into the seven reservations of today. The United States agreed to more protection for the Sioux by creating a fund to care for the Sioux. Section 22 is very important as it states:
All money accruing from the disposal of lands in conformity with this act shall be paid to the Treasury of the United States and be applied solely as follows: First, to the reimbursement of the United States for all the necessary actual expenditures contemplated and provided for under the provisions of this act, and the creations on the permanent fund hereinbefore provided; and after such reimbursement to the increase of said permanent for the purposes hereinbefore provided.\textsuperscript{39}

Here again the United States is saying they will take care and compensate the Sioux for the breaking up of the Great Sioux Reservation. The United States is clearly not taking care of the Standing Rock Sioux today. Section 28 reaffirms that Article 12 of the 1868 Fort Laramie Treaty, which states that three-quarters of the Sioux male population needs to approve any land cessions is still active:

This act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent, shall be made known by proclamation by the President of the United States, upon satisfactory proof presented to him, that the same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such proof and proclamation this act becomes on effect and null and void.\textsuperscript{40}

The United States never was able to acquire the necessary approval of three-fourths of the adult male population to any of the acts modifying the 1868 Fort Laramie Treaty justifying the Sioux to believe all of the Congressional Acts concerning the 1868 Fort Laramie Treaty to be invalid and non-binding today.

\textbf{Summary of the Violations of Treaties and U.S. Laws by the United States}

Beginning with the Fort Laramie Treaty of 1868, the United States began to control the Sioux while at the same time agreeing to protect their food and water supplies. The United States agreed to some protections for the Sioux through promises to reimburse the Sioux for losses to the food supply by settlers crossing the Great Sioux Reservation and agreed to protect the food and water resources of the Sioux.\textsuperscript{41} For political reasons by 1871, the United States stopped making treaties between Indian tribes and the United States. The U.S. government passed a new law the Indian Appropriations Act of 1871, U.S. Code Title 25, Section 71. Under this law, the United States made Indians wards of the United States making Indian tribes dependent sovereign Indian Nations. The United States was now going to assume responsibility for all of the needs of all Indians, which includes a safe food and water supply.\textsuperscript{42}

By 1877, the United States wanted to annex the Black Hills and passed another act that would alter the Fort Laramie Treaty of 1868. The Act of February 28, 1877 (19 Stat. 254) changed a few articles in the 1868 treaty and added more agreements to protect the food and water supply of the Sioux, for taking away the Black Hills. When Red Cloud finally agreed to sign this Act, he stated that the Black Hills were worth seven generations (or as interpreted seven hundred years) of care for the Sioux people.\textsuperscript{43} There were several legal cases attempting to gain proper compensation for the loss of the Black Hills. After years of legal battles, the Sioux in 1979 won justified compensation for the taking of the Black Hills in 1877 but promptly countered with another legal suit asking for the return of the Black Hills to the Sioux and $11 billion dollars compensation for damages.
In 1889 the United States wanted more land and made another piece of legislation, the Act of March 2, 1889 (25 Stat. 888). In this Act, Section 14 clearly states the United States would protect the water supply of the Standing Rock Sioux, by making the Sioux a riparian proprietor to the water on, near or adjacent to the Standing Rock (the Missouri River) and the other Sioux Reservations. At the same time, the United States promised not to allow another riparian proprietor upstream of the Sioux, which is a promise that is clearly being broken.

Today, in actions opposing the Dakota Access Pipeline, the Sioux at Standing Rock are asking the United States to honor the agreements made with the Great Sioux Nation between the years 1868 and 1889. Three times, the Sioux voted on three Acts of Congress and three times three-fourths of the adult male population of the Sioux did not approve the Acts. Therefore, the Acts should be invalid. However, the United States forced the Acts on the Sioux any way forcing the Sioux to honor the agreements made. The United States needs to keep up their end of at least Section 14 of the 1889 Act, making the Standing Rock Sioux the riparian proprietor of the Missouri River as it is adjacent to and the eastern boundary of the Standing Rock Reservation.

With the resurrection of the Keystone Pipeline and other pipeline projects, there will be effects on the safety of the food and water supplies for all of the Sioux Reservations in North and South Dakota. It will be imperative that exploration of the Acts Congress imposed after 1871 to be used as a defense against these pipeline projects to insure the Sioux maintain a safe and clean water supply. The Act of March 2, 1889 is a good place to start as the United States made many promises to the Sioux to protect their water supply, and has already reneged on their promises to protect the water supply of the Standing Rock Sioux. As George William Rice stated: “perhaps the basic contention of American Indians today with respect to their treaty rights is not that treaties cannot be repealed, abrogated, or suspended (by either party), but that they are not given the dignity which such legal agreements should receive.”

End Notes


5 Ibid, 5


7 *Indian Appropriations Act of 1871*, U.S. Code Title 25, Section 71 41st Congress 2nd sess. (March 3, 1871), 25, 71.


10 Rice, 240.

11 Rice, 242.

12 Rice, 241-244.

13 Rice, 244.


18 Rice, 247.

19 Ostler, The Lakotas and the Black Hills, 129.

20 Ibid.


26 Ostler, The Lakotas and the Black Hills, 129.
27 Calloway, 238.


29 Ostler, *The Lakotas and the Black Hills*, 139-140.


38 Ibid, 11/15.

39 Ibid, 13/15.

40 Ibid, 14/15.

41 Fort Laramie Treaty of 1868.

42 Rice, 239.


44 Rice, 247.

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