

1868 TREATY COULD PROTECT OUR WATER AND LAND

"A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history..."

*U.S. Supreme Court, quoting U.S. Court of Claims,
on the 1877 Black Hills Act. June 1980.*

WHAT DOES THE TREATY SAY?

The 1868 Fort Laramie Treaty was signed by representatives of the Dakota (Sioux) Nation and representatives of the United States. It was ratified by Congress and proclaimed by President Andrew Johnson, making it, according to Article VI of the U.S. Constitution, "the supreme law of the land" — on the same legal level as the Constitution and above state law.

The Treaty is composed of 17 articles. The most important articles deal with land — land that was reserved by the Dakota ("reservations") and land that was given up by the Dakota in exchange for services, goods and promises.

The reservation boundaries were set by Article II of the Treaty. The area covered what are now known as the western half of South Dakota, about 1/3 of North Dakota, northern Nebraska, 1/4 of Wyoming, and a good-sized corner of Montana.

The United States government agreed that no non-Dakota "shall ever be permitted to pass over, settle upon, or reside in" the reserved lands. The U.S. also agreed that no white people could "pass through" that area without getting the Indians' consent.

Article XII is the most important agreement for the continuing validity of the Treaty. It states that no agreement by the Dakota to give up any of their reserved lands "shall be of any validity or force" unless it is "signed by at least three fourths of the adult male Indians." No agreement has been signed by 3/4 of the adult male Dakota since then.

WHAT DID THE SUPREME COURT SAY ABOUT THE TREATY?

On June 30, 1980, the U.S. Supreme Court made a major decision on the 1868 Treaty. The Supreme Court said that the Black Hills region was taken from the Dakota Nation illegally by an 1877 Act of Congress. In the decision, the Court said that the 1877 Act "ignored the stipulation of the Fort Laramie Treaty that any cession of the lands...would have to be joined in by three fourths of the adult males."

WHAT HAS HAPPENED SINCE THE SUPREME COURT DECISION?

Two cases have been filed by the Oglala Sioux Tribe at Pine Ridge. One lawsuit asks for \$11 billion in damages for the taking of the Black Hills. The money would compensate for the Dakota people's suffering because of the lack of the Hills and for the vast mineral and other resources taken from the Black Hills in the last 113 years.

The case also asks for the return of the Black Hills to Indian control.

HOW CAN THE TREATY AFFECT BLACK HILLS LANDHOLDERS AND WATER?

Oglala Sioux Tribal Attorney Mario Gonzalez indicates that the federally-held lands are the target of the part of the suit asking for return of the Black Hills. Said Gonzalez, "We are a just people. I don't think you can expect us to come and kick people off privately held land."

More specifically, prominent Indian spokespeople from across the country agreed with family farmers in the "Declaration of Dependence on the Land" that non-Indian family landholders should be able to keep their land if Indian treaty rights are upheld. Current landholders would get long-term leases, provided that they use good land-care practices.

In fact, Indian landlords might provide more benefits than the current system that allows the government to grab private land under eminent domain — often for the benefit of large corporations. The Indian practice of respect for the land could eliminate corporations' pollution and abuse of vast amounts of water and land — regardless of whether the corporation owns them. Proposals such as ETSI's plan to drastically deplete the Madison aquifer would become impossible.

HOW CAN THE TREATY AFFECT URANIUM MINING?

The Supreme Court's recognition of the Fort Laramie Treaty and the recent lawsuits can be the determining factor for uranium mining in the Black Hills. One portion of the lawsuits asks that mining of resources be halted until the case is decided.

Between the time that a case is started and when it is decided, judges often stop actions that might hurt the property under dispute by issuing an injunction. If the judge decided that uranium mining would hurt the land and water in the Black Hills, he could issue an injunction against the corporations that are trying to begin mining here.

And if the case is decided in favor of the Oglala, uranium mining could be stopped for good, since the Oglala Tribal Council passed a resolution against uranium exploration on their reservation and because the Dakota consider the Black Hills their sacred church — much like Jerusalem to Christians, Jews and Moslems. The 1868 Treaty is a valuable ally to those who want to prevent further uranium mining in the Black Hills.

Because treaties are on the same level as the United States Constitution, many people feel that continued treaty violations are weakening the Constitution. To those who defend the U.S. Constitution, treaty rights — as the supreme law of the land — are part of what they are fighting for. To those who defend the land, treaty rights — as laws affecting the land — are part of what they are fighting with.