

Eligibility under the 1888, 1889, and 1890 Federal
Appropriations for the Mdewakanton Sioux of
Minnesota

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Introduction

The purpose of this report is to provide guidance in determining eligibility under the 1888, 1889, and 1890 Appropriation Acts for the benefit of the Mdewakanton Sioux (now usually Dakota) of Minnesota. Although I began work on the specific questions described in this report in November 2004, when I discussed with individuals of Mdewakanton Sioux ancestry the October 27, 2004, Court of Claims opinion and order, I have spent the last 25 years studying American Indian history in Minnesota, as described in my attached vita. In 1979, while an editor and researcher with the Minnesota Historical Society, I was sent to the National Archives in Washington, D.C., to select and have microfilmed a number of Sioux censuses and annuity rolls. I discuss some of those censuses and rolls, including the McLeod 1886 roll and James McLaughlin's 1899 census, in this report. In addition, for the past four years, I have been studying the family histories of a number of Mdewakanton Sioux whose families have been in Minnesota for hundreds of years and whose direct ancestors were in Minnesota on May 20, 1886. The opinions I have formed based on my research and review of relevant documents are set forth in detail below.

The 1888, 1889, and 1890 Appropriation Acts

On June 29, 1888, the U.S. Congress passed an appropriation "for the support of the full-blood Indians in Minnesota, belonging to the Medawakanton band of Sioux Indians, who have resided in said State, since the twentieth day of May, A.D. eighteen hundred and eighty-six, and severed their tribal relations" (U.S. Stat. 25: 228). The next year, on March 2, 1889, another appropriation was passed to benefit and to buy lands for the same group of Indians "or family thereof," with language adding that those who were "engaged in removing to said State, and have since resided therein" would also be included (U.S. Stat. 25: 992). On August 19, 1890, Congress passed a further appropriation for the support of the same group, including "full and mixed blood Indians" (U.S. Stat., 26: 349).

An undefined portion of the money appropriated under these acts was intended to purchase land. Although the lands purchased with the 1888, 1889, and 1890 congressional appropriations are commonly referred to as the "1886 lands," they were not purchased in 1886 (U.S. Federal Court of Claims, Opinion and Order, October 27, 2004, p. 7). The United States did not start purchasing the 1886 lands until January 1889. As of 1980, the 1886 lands consisted of: (1) approximately 260 acres in Scott County (Shakopee lands); (2) approximately 575 acres in Redwood county (Lower Sioux lands); and (3) approximately 120 acres in Goodhue County (Prairie Island lands).

Eligibility for Benefits under the 1888, 1889, and 1890 Appropriation Acts

As documented in a variety of sources, the purpose of the 1888, 1889, and 1890 appropriations was to provide for those Mdewakanton Sioux in Minnesota who had been loyal to the United State during the 1862-63 Dakota Conflict and who could not take part in tribal relations with other Mdewakanton Sioux (Sept. 15, 2004, "Appendix of Exhibits

for Memorandum of Law of the Plaintiffs,” Exhibit 37; Henton to Commissioner, Dec. 31, 1888, NA, RG 75, Letters Received, 1881-1907, Box 496). Instead of requiring documentation of loyalty in that earlier time, the Appropriation Acts used other criteria as a means for selecting those Mdewakanton Sioux to be benefited. The three Appropriation Acts created a set of criteria for determining eligibility for benefits. To be eligible under the Appropriation Acts, an individual must be or must be descended from someone who: (1) was a full blood or mixed blood Mdewakanton Sioux, (2) had resided in Minnesota since May 20, 1886, or was then engaged in removing to Minnesota, and, (3) had severed their tribal relations.

The meaning of these criteria is shown in the way in which they were carried out by government officials. Prior to, during, and after the passage of the appropriations, the government created a number of census and annuity rolls for the purpose of determining eligibility under the 1888, 1889, and 1889 Appropriation Acts. Those censuses and rolls are discussed in detail below in the context of these three criteria.

Criterion 1: Full Blood and Mixed Blood Mdewakanton Sioux

The question of the blood status of Mdewakanton Sioux requires some explanation. The 1888 Act refers to “full-blood” Mdewakanton Sioux, the 1889 Act refers to “full-blood” Mdewakanton Sioux and their families, and the 1890 Act refers to both “full and mixed blood.” But the purpose of the Appropriation Acts was uniform—that is, to reward the Loyal Mdewakanton Sioux for their loyalty and assistance during the 1862 Dakota Conflict, without reference to bloodlines. Even if Congress had intended to distinguish between categories of beneficiaries based on bloodlines, there was simply no way for the government to insure that this was done. Instead, at the time, categorization by blood was a highly subjective, uncertain, and ethnocentric process, which was unsuccessful in applying a strict blood categorization. This is demonstrated in the way government officials carried out the Appropriation Acts.

The provision of the 1888 appropriation designing the benefits for so-called full bloods was a means for directing initial government benefits to those Mdewakantons in Minnesota who were in most need. As used at the time, however, this term was not a scientific evaluation of a Sioux person’s ancestry, but a variable definition based on the cultural prejudices of the observer. Historian Roy Meyer (1993: 277) notes that by the 1880s, “the great majority of the Sioux in Minnesota were of mixed blood, and there was no reliable way to discriminate among people with varying degrees of Indian ancestry.” Similarly, ethnohistorian and anthropologist Carolyn Anderson (1997: 240) states, “operationally ‘full blood’ meant more than half Dakota ancestry and living in one of the all-Dakota communities.” These Sioux would more likely have exhibited cultural traits of their ancestors, such as living in tepees or carrying out traditional seasonal activities, while those who lived in white communities were more likely to live and dress like whites.

Thus, those targeted under the earliest appropriation act of 1888 for Minnesota Mdewakantons were people of Sioux ancestry living in Sioux communities, rather than

Sioux people living in white communities. But as it turned out the term could not be applied with any scientific accuracy to Mdewakantons. Thus in providing clarification of the criteria for eligibility in the 1889 and 1890 Acts, Congress signified that it intended to provide benefits to all Mdewakanton Sioux in Minnesota who fit all the other criteria, including not only Sioux living in all-Sioux communities, but those who lived in white cities and towns. There is no evidence that federal agents ever required a scrupulous attempt to ascertain whether or not particular Mdewakanton Sioux were full blood or mixed blood through genealogical proof or any other kind of investigation. Evidence that the government did not apply a strict, scientific, and consistent standard for determining blood quantum can be seen in the various censuses done by federal officials between 1886 and 1899.

The McLeod Census

In September 1886, nearly two years before the 1888 act was passed, Agent Walter McLeod completed a census of the Loyal Mdewakantons. McLeod described his census as entitled “a complete enrollment of the full blood Medewakanton band of Sioux Indians of Minnesota” (MHS M405, Sept. 2, 1886, McLeod to Atkins).¹ The census included 208 people in 73 families. In addition to name, age, and sex, McLeod included property held, such as number of acres owned and cultivated, house type, and ownership of horse and wagon. McLeod recommended that these Indians be “located” or concentrated at three locations, Redwood Falls, Shakopee, and Prairie Island, “where suitable lands can be bought.” He wrote: “Most of the Indians need more land than any thing else at present.” In many cases on his roll he recorded whether individuals needed more land.

There is no information to show that McLeod made or attempted to make an investigation into the actual blood status of individual Mdewakanton Sioux. There were no existing scientific methods for doing so. Even if it might have been possible for McLeod, using genealogical information going back multiple generations to the arrival of white people in the Minnesota region, to do a blood status investigation, neither McLeod nor any other government official did so.

Assignment of the terms full blood and mixed blood was highly subjective. For example, the first person on McLeod’s roll, Alfred Rock (or Rocque) was later listed on James McLaughlin’s 1899 Mdewakanton Sioux census as a mixed blood (McLaughlin Census, p. 2). Similarly, George Crooks, though on McLeod’s roll is also shown on the 1900 census of Redwood County as being one-half white (U.S. Census, 1900, Redwood County, Paxton Township, sheet 10).

The Henton Census

In January 1889—after the passage of the 1888 act, but before the 1889 act—Special Agent Robert B. Henton produced a new census of the Mdewakanton Sioux “living in Minnesota since May 20, 1886.” Henton based his census in large part on McLeod’s 1886 roll. The 1889 Henton census included 264 people in 80 family groups (Anderson

¹ McLeod’s letter and his “enrollment” are included in the set of Dakota rolls microfilmed by the Minnesota Historical Society, M405. On this microfilm, McLeod’s census and the letter are mixed in with an Annuity Pay Roll for a payment McLeod made to the Mdewakantons in April 1885.

1997: 251). Unlike the McLeod roll, Henton's was organized by the locations of the Mdewakanton settlements and camps, including Prairie Island, Hastings, Redwood, Prior Lake, and Wabashaw Settlements, and Bloomington, Mendota, and Grey Cloud Island Camps.

The 1889 Henton census makes clear Henton's intention and that of the government to benefit all Loyal Mdewakantons, regardless of documented bloodlines. Henton revised the McLeod census, specifically including some so-called mixed bloods. Henton did so before the passage of the 1889 act which referred to "the families thereof" and the 1890 act which referred to "mixed blood" Mdewakantons for the first time.

Henton's roll includes a number of people identified with the symbol "1/2," an apparent indication that Henton believed them to be of half Sioux ancestry. These included Harry Bluestone and his wife Ellen, who lived in the Prior Lake community. In addition, Henton continued to list individuals listed by McLeod that other sources have described as mixed bloods, such as George Crooks, who was now included with his wife and children at Redwood and Alfred Rocque, with his wife and daughters at Wabasha.

Initially Agent Henton may have assigned lands in a manner favoring the Mdewakanton Sioux he perceived to be full bloods (U.S. House of Representatives 1892). Early in his tenure, Henton stated that he opposed giving benefits to so-called mixed bloods (Meyer 1993: 286-87). Since he explicitly included some so-called mixed bloods and some of those included in on his 1889 roll were later defined as mixed bloods, however, these statements must be understood as referring to the ethnocentric category that defined full bloods as being those Mdewakanton Sioux living in Sioux communities whom he believed to be in most need.

Among those to whom Henton assigned land in the 1890s was Emma LaFramboise, 38, later listed in 1899 as a mixed blood, to whom Henton assigned 17 7/9 acres of land at Shakopee (Downs to Commissioner, Oct. 8, 2004, in "Plaintiffs' Response Memorandum and Cross-Motion," Exhibit 37). LaFramboise lived there with her children in 1899 (McLaughlin Census, p. 4). Another assignee was the same Alfred Rocque of the 1886 and 1889 censuses who, in 1899, listed as a mixed blood, lived with his wife Harriet at Morton on 23 acres of land assigned by Henton (McLaughlin Census, p. 2). George Crooks also received a land assignment at Morton from Henton despite later being listed in the United States Census as a mixed blood (McLaughlin Census, p. 2; U.S. Census, Minnesota, 1900, Redwood County, Paxton Township, sheet 10).

Supplemental Henton Censuses

As part of his duties to purchase and assign the 1886 lands, Henton updated his initial census several times to identify accurately the Loyal Mdewakantons who were entitled to receive the benefits of the lands. Henton's first census taken after the 1889 roll was done in November 1891 (1891 Census in NAM M595, MHS M559, Roll 2). A few so-called mixed bloods were included in the list of 185 people living in 66 families. Henton wrote that there had been a "great many changes since the first census was taken [in 1889]. Some have married, some are dead and more have forfeited their right to enrollment."

Henton appears to have relied on the Mdewakanton Sioux themselves to apply for benefits before enrolling them. In June 1892, Henton submitted to Washington a supplemental list of mixed bloods, apparently intended to accompany his census of the year before (1892, June, Census in NAM M595, MHS M559, Roll 2). Included in the list were 10 families of 28 people. "These are some that have made application since March last," Henton stated and he noted that Walter McLeod, who was himself a mixed blood, was on the list, even though he was "reported to be worth \$100,000 at least."²

Henton's specific reference to McLeod symbolized his initial reluctance to include all of the so-called mixed blood Mdewakanton Sioux who had been in Minnesota on or before May 20, 1886, based on a belief that these so-called mixed bloods were too well off to deserve the benefits accorded them under federal law. Even so, throughout the 1890s, Henton steadily added Mdewakanton Sioux to the rolls, sending additional lists to supplement earlier ones. He sent another list of mixed bloods to Washington in January 1893, including 45 families of 122 people, compiled in December 1892 (1892, December, Census [labeled 1893] in NAM M595, MHS M559, Roll 2). With this list, he said, there would now be "304 souls which will be entitled to participate in the distribution of this fund."

Finally, in July 1895 and January 1896, Henton did an entirely new census of the full- and mixed-blood Mdewakantons of Minnesota ("Mdewakanton Full and Mixed Blood Sioux of Minnesota," microfilm copy in NAM M595, MHS M559, Roll 2). The 201 full bloods on the list were categorized by location, in the Redwood, Shakopee, and Prairie Island communities. The mixed bloods, totaling 512 people, were not listed by location.

In his next census done on June 30, 1896, including 761 individuals, Henton divided the list into two sections, the first, including 201 people, labeled Mdewakanton Sioux, the second, part including 461, labeled "Mix blood" Mdewakanton Sioux (1896, June 30, Census in NAM M595, MHS M559, Roll 2). In a cover letter, Henton stated: "This Roll shows a good many names of individuals that have never participated in any of the distributions I have made."

A year later, in June 1897, Henton compiled a new census, accounting for births, deaths, and new enrollments (1897 Census in NAM M595, MHS M559, Roll 2). In doing the list, Henton did not title the pages for so-called full bloods and mixed bloods differently, though at the end of the first nine pages he included a note stating that: "The above names on this Roll from page No. 1 to 9 inclusive [sic] are of full Bloods and their familys. The last sec. of this roll are all Mix bloods." The statement made clear the difficulty of actually segregating Mdewakanton Sioux by blood status at this point in their history. In all the census enumerated 920 people, including Indian and English names, sex, relationship and age, but not place of residence.

Henton used his new compilation of names to apportion federal benefits. In November 1897, Henton made a payment to 898 Mdewakantons, amounting to \$5.10 to each person

² If a census was taken in March 1892, it has not been found.

regardless of apparent full blood or mixed blood status (1897 [labelled 1898] Annuity Pay Roll, in MHS M405, Roll 1). The annuity roll that records this payment generally follows the order of names in the June 1897 census, with full bloods listed first, followed by mixed bloods.

In doing his final census on June 30, 1898, in a list of 945 people, Henton included no information about the blood status of the individuals on the list, either on the census itself or in the cover letter sent to Washington (1898 Census in NAM M595, MHS M559, Roll 2). Otherwise the census records the same kinds of information as the earlier censuses.³

At no time during the period of the 1890s, while Henton included more and more of the individuals eligible for benefits as Mdewakanton Sioux in Minnesota, did he assert that his roll from 1889 or McLeod's from 1886 had precedence over the later censuses, in apportioning land or other benefits.

The McLaughlin 1899 Census

Henton's 1897 annuity roll provided the basis for the most complete early enrollment of the full-blood and mixed-blood Mdewakanton Sioux, a census compiled, after Robert Henton's death, in March 1899 by James McLaughlin, a special inspector with the Department of Interior. McLaughlin's census was the culmination of the prior McLeod and Henton censuses. McLaughlin did his work shortly after Agent Henton's death. Federal officials were anxious to have a full accounting of the lands Henton purchased for the Mdewakanton Sioux and a new and complete census of the Mdewakanton Sioux people in Minnesota. Acting Commissioner Tonner wrote to McLaughlin on February 20, 1889, (Tonner to McLaughlin, Feb. 20, 1899, McLaughlin Papers, MHS M230, Roll 2), stating that the census was made to insure that "the names of all Indians if any, heretofore improperly enrolled as members of such band, might be eliminated from said rolls, and thereby prevented from receiving any further payments." As for the land, Tonner urged McLaughlin to get any information he could from Henton's family and noted, "the title to all the land purchased by late Agent Henton for said Indians, is still vested in the United States—being held in trust for them."

McLaughlin spent more than two weeks in doing the census, traveling to St. Paul, Wabasha, Eggleston, Hastings, Shakopee, and Morton along with a clerk employed to help him (Voucher for Traveling Expenses, March 31, 1899, McLaughlin Papers, MHS M230, Roll 14; Report of Irregular Employees, March 31, 1899, NA, RG 75, Letters Received, 1881-1907, Box 1641, File no. 14940-1899). McLaughlin completed his roll on March 17, 1899. The document, a "Census of the Medwakanton Sioux of Minnesota," includes 903 individuals, including both full and mixed bloods (McLaughlin Census in MHS M405; see also McLaughlin to Commissioner, March 17, 1899, McLaughlin Papers, MHS M230, Roll 23). McLaughlin completed his roll by March 17, 1899.

McLaughlin mentioned Henton's last annuity roll and used the work Henton did throughout the 1890s as a basis for his own, though he made numerous changes. The roll

³ Interestingly, Henton notes in the cover letter to the census that he kept a "Census Book" from which he transferred names to the roll sent to Washington. The current location of this census book is not known.

records the number of each entry on the 1897 roll and assigns each entry a new number. A copy of Henton's 1897 roll in the National Archives is covered with corrections in a different handwriting, which appears to be McLaughlin's (1897 [labeled 1898] Annuity Pay Roll, microfilm copy in MHS M405, Roll 1). These same corrections are reflected in McLaughlin's census. Writing on March 17, 1899, McLaughlin stated that he dropped from the rolls a total of 141 individuals who appeared on Henton's 1897 roll: "I have dropped 30 who have died since the last payment, 20 who were not of Medawakanton Sioux blood, 52 who were non-residents of Minnesota, being now out of the state, and 39 that were duplications" (McLaughlin to Secretary of Interior, March 17, 1899, McLaughlin Papers, MHS M230, Roll 23).

In preparing the 1899 census, Inspector McLaughlin worked carefully to follow the Department of Interior's mandate to create an accurate enrollment by listing only those Loyal Mdewakanton Sioux and their families who were eligible to receive benefits and removing those who were erroneously included on the prior censuses. The census was organized by community and included individuals living in settlements that were mainly Sioux but also those living in St. Paul, Minneapolis, and smaller towns. McLaughlin stated that he made special efforts to enroll mixed bloods who were recognized as belonging to the Mdewakanton and Wahpekute "which two bands are practically one, having merged into each other many years ago." He noted that those he enrolled had been beneficiaries or were descendants of beneficiaries under the Treaty of 1851. McLaughlin also pointed out the degree to which the mixed bloods were truly Loyal Mdewakantons during the U.S.-Dakota Conflict of the 1860s, in some ways more so than the full bloods. He pointed out that the mixed bloods suffered through the actions of some of their full blood relatives (McLaughlin to Commissioner, March 17, 1899, McLaughlin Papers, MHS M230, Roll 23):

Notwithstanding that nearly every mixed blood remained loyal to the government and aided the whites in suppressing that outbreak, they (the mixed bloods) were suspected and distrusted by the whites, and at the same time subject to insults and despised by the Indians, whom they refused to join or aid in any way, in consequence of which I regard it but just that they be included in the census which I was intrusted to take, and especially when I found that they were recognized by Mr. R. B. Henton in the annuity payments made by him.

McLaughlin suggested that many of the full bloods had participated in the conflict in 1862 and some of those who were particularly active in the fighting

are now the most outspoken and active in objecting to the enrollment of the mixed bloods, whose ancestors, or themselves proved their loyalty to the government and white settlers during that crucial period, and from which it would seem that the protest of the Indians against enrollment of the loyal mixed bloods should receive but little consideration from the Department, while the full blood Indians, who were hostile at that time, receive a gratuity from the government.

Among the families that McLaughlin singled out in describing his census were the Mdewakanton mixed bloods from the Mendota community at the mouth of the Minnesota River, opposite Fort Snelling. Mendota had a mixed Sioux-white community since the early 19th century. Some of the Sioux mixed bloods there worked for fur trader and later governor and general Henry H. Sibley. They aided Sibley when he prosecuted the war against the Sioux in 1862 and after. These mixed blood Sioux did not leave Minnesota in 1863 but remained throughout the late 19th century, providing a haven to which other Sioux would later return from the West (Meyer 1993: 270, 286). The Mendota Mdewakantons clearly fit the definition of those “loyal” to the United States, who were intended to be benefited by the Appropriation Acts.

McLaughlin mentioned the LeClaire, Auger, and Wigley families of Mendota origin, who were all listed on the later Henton rolls and who derived their Indian ancestry from Angelique Renville, a woman of three-quarters Mdewakanton blood. Angelique Renville—who married the French bookkeeper of Henry H. Sibley, Hypolite Dupuis—derived her Sioux ancestry in the Kaposia community near St. Paul led by Chief Little Crow. Her family, he wrote, was “born among Mdewakantons and always lived among them, sharing in all the Mdewakanton annuities, while such annuities were provided and issued without questioning their right.” McLaughlin said he was “well acquainted” with Angelique Dupuis before she died.

McLaughlin noted that despite this ancestry, some of the Mdewakanton Sioux, particularly those at Redwood, questioned the legitimacy of such families, but McLaughlin commented that these Redwood full bloods were “particularly anxious to have their own mixed blood relatives included in the census.”

McLaughlin was well acquainted with the Mdewakanton Sioux because his wife, Marie Buisson, later well known as an author of a collection of Sioux stories, was from the Sioux community at Wabasha.⁴ Perhaps to counter any suggestions of partiality, however, McLaughlin made a point of noting that “the three Buisson families and David Cratte of Wabasha, Minnesota, the [Walter] McLeod family of Bloomington, Minnesota, the Baasen family, of New Ulm, Minnesota” were among the mixed-blood families “who are quite able to provide for themselves,” and did not desire any of the annuity payment. Although some mixed-bloods were well off, McLaughlin said he had found “many mixed bloods, particularly those residing in or near St. Paul, Minnesota, to be very poor, and as badly in need of assistance as any of the full blood, Indians, and some of them even more destitute than majority of the full bloods.”

As shown here, it was not until 1899 that a full and complete list of full and mixed blood Mdewakanton Sioux existed. The list was the result of the efforts of joint Henton and McLaughlin. With the information it provided, the federal government was finally in a position to carry out fully the criteria in the Appropriation Acts, which made benefits and land available to full and mixed Mdewakanton Sioux who had lived or whose ancestors had lived in Minnesota prior to, on, and after May 20, 1886.

⁴ Marie L. McLaughlin, *Myths and Legends of the Sioux* (1916, Reprint ed. Lincoln: University of Nebraska Press, 1990).

Indian Land Certificates

Some of the most significant records that might be used to verify the eligibility of a Mdewakanton Sioux descendant under the Appropriation Acts are the documents through which federal officials in the 20th century assigned 1886 land to individual members. Though a full accounting of land assignments by the federal government for the 1886 land has not been done, individuals whose eligibility under the Appropriation Acts was first documented in the later Henton rolls and the 1899 McLaughlin roll were assigned 1886 lands at Shakopee.

The form of “Indian Land Certificate” used in assigning 1886 lands throughout the 20th century appears to have been in place by 1905 (see Indian Land Certificate of Harry Bluestone, June 1, 1905, in “Appendix of Exhibits for Memorandum of Law of the Plaintiffs in Opposition to the Motions and Memoranda of Shakopee, Prairie Island and Lower Sioux Communities for Leave to Participate as Amici Curiae,” Exhibit 29). The form states that the individual receiving the assignment was certified to be a member of the Mdewakanton band of Sioux Indians residing in Minnesota. A condition of the assignment was that if the land was abandoned by the allottee “then said land shall be subject to assignment by the Secretary of Interior to some other Indian who was a resident of Minnesota May 20, 1886, or a legal descendant of such resident Indian.”

As indicated such forms “certified” that those receiving the assignment fit the criteria required to use the land. To receive such land certificates, individuals were required to submit applications and other forms to attest to the fact that they fit the criteria for using 1886 land. Examples of these forms can be found in the land files for some of the same mixed blood Mdewakanton Sioux McLaughlin identified in his 1899 census—people who do not appear on the McLeod or initial Henton censuses.

When Abraham Robinette—a Mdewakanton Sioux who had been in Minnesota since birth—applied for a land assignment Scott County in May 1921, he filled out an “Application for Assignment of Mdewakanton Sioux Lands in Minnesota.” This form noted that the land in question “was provided for the use and benefit of the Mdewakanton Sioux Indians of Minnesota by acts of Congress of March 2, 1889 (25 Stat. 992) and August 19, 1890 (25 Stat. 314)” and required applicants to answer questions as to whether they or their parents or grandparents resided in Minnesota on May 20, 1886 (see BIA, Minneapolis Office, Land Assignment Records for Abraham and Alfred Robinette, received by family members as a result of a FOIA request).

Although Robinette fit all the criteria, the scarcity of land meant that he did not receive an assignment of land at Shakopee until 1927. At that time C.F. Hauke, Chief Clerk of the Office of Indian Affairs in Washington, wrote a letter to Pipestone agent J. W. Balmer, authorizing Robinette’s assignment. Hauke stated that the 1890 provision governed this assignment:

This is in reply to your letter of May 31 reporting as to Abraham Robinette, who desires to have certain land purchased for the Mdewakanton Sioux Indians

assigned to him. The act of August 19, 1890 (26 Stat. 349) provided that the Indians to be benefitted [sic] were the full and mixed-bloods in Minnesota theretofore belonging to the Mdewakanton Band of Sioux who had remained in said state since May 20, 1886, and have since resided there, and their descendants.

After Abraham Robinette's death his son Alfred farmed the land and in 1939 received the assignment under his own name.

Albert LeClaire was another Mdewakanton Sioux of mixed ancestry, a descendant of Angelique Renville, who received a land assignment for 1886 lands, despite the fact that neither he nor an ancestor were listed on the 1886 McLeod or 1889 Henton censuses. In fact he appears to have received more than one assignment for land at Prior Lake. The latest one was for land earlier assigned to George Crooks, Jr., and Meredith Crooks, who had both abandoned their assignments and were living in California (Balmer to Commissioner, Sept. 21, 1937, in NA, RG 75, Central Classified Files, File no. 60092-1937). LeClaire, who was 52 years old at the time and had been born in Mendota, filled out the application for 35 5/9 acres, and received his assignment in 1937, attested by a land certificate certifying that he was eligible under the criteria (NA, RG 75, Central Classified Files, File no. 60092-1937).

There is no evidence that the government applied a racial blood test for determining eligibility for 1886 lands. As shown here, during the 20th century, federal officials made no distinction in assigning these lands based on full blood or mixed blood status.

Criterion 2: Residence in Minnesota on May 20, 1886

The intention to discourage migration of Mdewakanton Sioux back to Minnesota is reflected in the May 20, 1886, cutoff date, chosen to distinguish those who were more likely to have been Loyal Mdewakantons from those who were less likely to have been so.⁵ It appears that the idea of having a provision limiting benefits to those who had lived in Minnesota since May 20, 1886, was intended to specify a date later than the May 15, 1886, appropriation, which had purchased the first lands for the Mdewakanton.⁶ At that time, Sioux who had been part of the group that had gone into exile in 1863 were now returning to live in Minnesota, joining their relatives who had never left. Appropriations passed in 1884 and 1886 had drawn Sioux people to return to Minnesota to share in the benefits (Meyer 1993: 276, 278)⁷ Since the government did not wish to encourage this

⁵ The precise date of May 20 appears to have been intended to insure that one particular Sioux, Jerome Big Eagle, and his family were benefitted (See "Defendant's Supplemental Filing; in Support of Defendant's Motion for Reconsideration," Aug. 8, 2005, 7-8, 14, Exhibits 45 and 46). However, ironically, as Robert Henton would later point out, Big Eagle was actually not one of the Loyal Mdewakantons, even though he may have met the criteria in the Appropriation Acts. He fought against the United States in the 1862-63 Conflict (Henton to Commissioner, Feb. 26, 1889, NA, RG 75, Letters Received, 1881-1907; Anderson and Woolworth 1988: 21).

⁶ Although purchased in 1886 these lands were treated separately from the lands purchased under the later appropriations. The term "1886 lands" does not refer to these earlier lands.

⁷ To avoid this problem, government officials made the 1884 law applicable only to those Mdewakanton who had been in Minnesota by October 1, 1883 (Meyer 1993: 276).

influx but did want to provide support for those who had not gone into exile, using May 20, 1886, as a cutoff date would prevent those who returned to Minnesota after the 1886 appropriation act from receiving a benefit intended for those who had truly severed tribal relations before that date.

The censuses described earlier provide information about which Mdewakanton Sioux in Minnesota met the May 20, 1886, criterion.

The 1886 McLeod Census

As noted above, McLeod's census was completed in September 1886, nearly two years before the 1888 act was passed (MHS M405, Sept. 2, 1886, McLeod to Atkins). Given this fact, the census did not refer to the May 20, 1886, residence criterion contained in the Appropriation Acts. Nevertheless, individuals on the McLeod roll have been found to be entitled to benefits under the acts.

The 1889 Henton Census

As discussed earlier, Henton's 1889 census was clearly intended to record Mdewakantons who lived in Minnesota before, on, or after the cutoff date of May 20, 1886. Henton noted that both his and McLeod's censuses were on file in Washington, and that if any names showed up in documents recording his disbursement of government resources that "do not belong there, it will be apparent." Henton never claimed that either his or McLeod's census of the Mdewakanton Sioux of Minnesota would be definitive on this point.

Supplemental Henton Censuses

Henton did not specifically refer to the May 20, 1886, cutoff date in compiling his supplemental censuses, though it is clear that Henton compiled these censuses for the purpose of providing a list of those eligible for benefits intended for the Loyal Mdewakantons.

The 1899 McLaughlin Census

McLaughlin stated that he "enrolled only those of the tribe now residing in Minnesota, all of whom were born here and have continued to reside in this state since their birth" (McLaughlin to Secretary of Interior, March 17, 1899, McLaughlin Papers, MHS M230, Roll 23). By definition this would have insured that those listed were Mdewakanton Sioux residing in Minnesota on May 20, 1886, or their descendants. As such the 1899 McLaughlin census is an accurate identification of the Loyal Mdewakantons who had lived or whose direct ancestors had lived in Minnesota on and after May 20, 1886.

Indian Land Certificates

As discussed earlier, Indian land certificates issued by the federal government in the 20th century specifically referred to the May 20, 1886, cutoff date, stating that those assigned land met the criterion.

Criterion 3: Severing Tribal Relations

The criterion referring to severing “tribal relations” was related to the May 20, 1886, requirement. It was intended to identify those Mdewakanton Sioux who did not go into exile with their people in 1863 or those who were unable to remain with their people and subsequently returned to Minnesota. In the latter case, it does not appear that the federal government intended that those already enrolled on other reservations such as Santee, in Nebraska, would be eligible for benefits in Minnesota unless they gave up these other enrollments. The government did not want to encourage migration back to Minnesota.

It is not clear what efforts were made by government officials to determine if those listed on the censuses of the Mdewakanton Sioux were enrolled elsewhere. In the cover letter to his last census 1898, Robert Henton mentioned two families, including six people in all, formerly identified as full bloods on earlier rolls, who, he had “been informed” after “this Roll was nearly completed,” were enrolled at reservations outside Minnesota, one family at Santee, the other at Flandreau (1898 Census in NAM M595, MHS M559, Roll 2). The next year, Special Inspector James McLaughlin dropped from enrollment individuals he could prove were already enrolled at Santee.⁸

⁸ See for example McLaughlin’s discussion of the family of Jennie Frazier at Eggleston, in McLaughlin to Commissioner, Sept. 26, 1899, NA, RG 75, Letters Received 1881-1907, Box 1705. For another case see McLaughlin to Stephens, March 17, 1899, MHS M230, Roll 23; Stevens to McLaughlin, March 23, 1899, MHS M230, Roll 2.

Conclusions

Conclusion 1: The Appropriation Acts do not require any procedure for assessing blood status in determining eligibility. In carrying out the Acts the government's actions do not demonstrate a distinction based on actual blood quantum.

As shown in this report, the intention of Congress was to benefit all Loyal Mdewakantons, regardless of actual blood status. Even if Congress had intended to distinguish between categories of beneficiaries based on bloodlines, there was simply no way to insure that this was done. Instead, at the time, categorization by blood was a highly subjective, uncertain, and ethnocentric process, which was unsuccessful in applying a strict blood categorization. This fact has been demonstrated in the way government officials carried out the Appropriation Acts. Throughout the late 1880s, into the 1890s, government officials included more and more Mdewakanton Sioux of whatever perceived blood category, who fit the other criteria of the Appropriation Acts, culminating in McLaughlin's 1899 census.

Conclusion 2: The 1899 McLaughlin Census is the Most Accurate and Complete List of Mdewakanton Sioux Entitled to the Benefits of the Appropriation Acts.

The 1899 McLaughlin Census was the culmination of the prior McLeod and Henton censuses. It was not until the 1899 McLaughlin census was done that a complete and corrected list of all Mdewakanton Sioux in Minnesota existed, allowing the government to determine those people who were eligible to receive benefits under the earlier Appropriation Acts. Evidence for its accuracy is found in the procedures used by McLaughlin to compile the census and in the fact that subsequent land assignments made by the government can only have been carried out on the basis of this census rather than the earlier 1886 McLeod and 1889 Henton censuses. Further, there is no evidence to suggest that the individuals listed in the 1899 McLaughlin census did not, or were not, entitled to receive benefits of the trust created in the Appropriation Acts.

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1978: University of Minnesota, Minneapolis, Bachelor of Electd Studies degree, with concentrations in History and French literature.

Employment

Current: Free-lance consultant, anthropologist, and historian.

1992-2003: Historian, researcher, and expert witness for several legal cases involving treaty hunting and fishing rights; consultant on history and ethnography. Clients included Keweenaw Bay Indian Community, Mille Lacs Band of Ojibwe, Menominee Indian Tribe of Wisconsin, Grand Traverse Ottawa and Chippewa, Little Traverse Bay Bands of Odawa, Mendota Mdewakanton Dakota Community, National Park Service, Minnesota Historical Society, Minnesota Department of Transportation.

1986-92: Instructor, research assistant, teaching assistant, University of Minnesota, Anthropology Dept.

1982-91: Free-lance writer and teacher, primarily employed by Minnesota Historical Society to write issues of *Roots* magazine for young people and teach workshops for secondary school teachers. Also authored historical articles for popular magazines. Researcher for Minnesota Folklife Society Fishing Project.

1976-82: Minnesota Historical Society, editor, researcher, writer; assist. editor, *Minnesota History*.

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1993: Solon J. Buck Award for best article published in *Minnesota History* in 1992 (“Indian Visits”).

1989: Awarded Wenner-Gren Foundation Ph.D. Dissertation Grant, for research on photographs of the Minnesota Ojibwe.

1988: Awarded Phillips Fund Grant from the American Philosophical Society, Philadelphia, for research on photographs of the Minnesota Ojibwe.

1985: Received grant from Minnesota Historical Society Publications and Research Division to do archival research on Ojibwe Indian photographs.

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