

**TREATY OF 1863**

**OFFICIAL CORRESPONDENCE**  
**FROM**  
**THE GRAND COUNCIL**  
**OF**  
**THE LITTLE SHELL BAND OF PEMBINA CHIPPEWA**  
**OF**  
**THE GREAT CHIPPEWA NATION**  
**TO**  
**THE HONORABLE SENIOR JUDGE**  
**THOMAS F. HOGAN**  
**OF**  
**THE U.S. DISTRICT COURT FOR THE DISTRICT OF**  
**COLUMBIA**



**THE LITTLE SHELL PEMBINA NATION**  
**THE LITTLE SHELL BAND OF THE PEMBINA CHIPPEWA**  
**OF THE**  
**GREAT CHIPPEWA NATION**  
Tribal Government  
P.O. Box 13555  
Grand Forks, ND 58208  
[www.pembinachippewa.org](http://www.pembinachippewa.org)

**Ref: CA No. 20-3775 (TFH)**

August 22, 2021

The Honorable Thomas F. Hogan  
U.S. District Court for the District of Columbia  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, NW  
Washington, DC 20001  
(202) 354-3420

**RE: LITTLE SHELL BAND OFFICIAL LETTER TO THE SENIOR JUDGE AND  
URGENT REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF**

**Ref:**

- (a) Article VI, 1789 United States Constitution
- (b) Article III, 1787/1789 Northwest Ordinance
- (c) 1834 Indian Non-Intercourse Act, (5 U.S.C. § 177 (1976) (originally enacted as Act of July 22, 1790, ch. 33, § 4, 1 Stat. 137, 138, as amended by Act of June 30, 1834, ch. 161, § 12, 4 Stat. 730)
- (d) **Senate Report 115-175, October 17, 2017, regarding the application of the Indian Non-Intercourse Acts under Constitutional Law upon Indian Lands.**
- (e) Pertinent Case Law being Violated by the Court:
  - a. Jones v. Meehan (1899);
  - b. Solemn v. Bartlett (1984);
  - c. Sharp v. Murphy (2020);
  - d. McGirt v. Oklahoma (2020);

- e. Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960); see also 73 A.L.R. Fed. 2d 221 (Originally published in 2013);
  - f. City of Sherill v. Oneida Indian Nation of New York, 544 U.S. 197, 204 (2005);
  - g. Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 672 F.3d 1021 (Fed. Cir. 2012) (invalidating an unauthorized lease to a third party for oil and gas production).
- (f) October 24, 1892, Protest Letter from Chief Little Shell III, Chief Red Bear II and the Grand Council of the Pembina Chippewa to the President of the United States and Congress.
  - (g) January 7, 1891, Pembina Chippewa Grand Council letter to the President of the United States, the U.S. Congress, the Secretary of the Interior and the U.S. Circuit Court of North Dakota.
  - (h) January 29, 1892, Pembina Chippewa Grand Council Declaration to the U.S. Government.
  - (i) December 6 and 8, 1893 Grand Council Declaration and Official Censure of the United States Government.
  - (j) June 12, 1892 - Intent to Defraud – R.G. 75. DOC. 26341. Letter. Commissioner of Indian Affairs J.D. Atkins to the Members of the Turtle Mountain Commission (McCumber Commission) instructing them on objectives and advising them to create 'a more compliant council' if negotiations do not go well.
  - (k) 1863 Old Crossing Treaty
  - (l) 38<sup>th</sup> Congress Executive Papers regarding the 1863 Old Crossing Treaty

Dear Senior Judge Thomas F. Hogan,

We remind the court of established case law:

1. Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960); see also 73 A.L.R. Fed. 2d 221 (Originally published in 2013).
2. City of Sherill v. Oneida Indian Nation of New York, 544 U.S. 197, 204 (2005).
3. Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 672 F.3d 1021 (Fed. Cir. 2012) (invalidating an unauthorized lease to a third party for oil and gas production).

As outlined in Senate Report 115-175 on October 17, 2017, Report 115-175,

*"The original purpose of the Indian Non-Intercourse Act was to "prevent unfair, improvident, or improper disposition by Indians of lands owned or possessed by them*

Our Band is Federally Recognized by the Legislative Branch and Executive Branch with the 1863 Old Crossing Treaty in which our band as lineal descendants have won individual cases in the State of North Dakota as we fall under Federal and not State Jurisdiction for offenses. Our Chief has likewise been used as a Federal Witness related to indigenous issues in North Dakota. The issue of recognition related to Treaty and Agreements is further elaborated in *Murphy v. Sharp* and *McGirt v. Oklahoma*.

The U.S. Court of Claims designated Chief Little Shell III and his Grand Council who led the Little Shell Band of Pembina Chippewa as the Original Title and Occupancy holders for northern North Dakota or over 9 million acres.

It is recorded that Chief Little Shell II and Chief Red Bear I were first encountered by the United States during the 1851 Pembina Treaty negotiations, an agreement they rejected. It was these same Chiefs who signed the 1863 Treaty. When they died their Sons Chief Little Shell III and Chief Red Bear II took their position with the very same Grand Council from 1851, and they rejected the 1892 McCumber Agreement.

When Chief Little Shell III died in 1903 the Chieftainship continued with his son and the council of the Band continued with the remaining families who have always considered themselves the Little Shell Band.

Turtle Mountain was the location of a Pembina Chippewa village that became overrun with Canadian Metis Indians throughout the 1870s and 1880s. The Turtle Mountain Band was a pan group of Pembina Chippewa and immigrant Canadian Metis and Cree.

In the early 1870s a Metis named Louis Riel became leader of the Metis Nation and founded Manitoba which is the Canadian Province north of North Dakota across the International Border. Louis Riel led the Red River rebellion in the 1870s and was forced to flee Canada. Louis Riel and a large group of Canadian Metis migrated into Turtle Mountain and northern North Dakota.

The Turtle Mountain Indian Reservation was created in December 1882 by Executive Order in violation of *Jones v. Meehan* (1899) whereby it was established that the Federal Government cannot grant that which it does not own. It was also violation of provisions outlined in the Indian Non-Intercourse acts from 1790 to 1834 as well as the 1789 Northwest Ordinance governing the legal means to obtain or utilize Indian lands.

The creation of the reservation caused those who migrated over the decade earlier to seek land allotments and initiated a second mass migration of Canadian Indians also seeking allotments who entered the Reservation's northern border which was the international border with Manitoba, Canada.

Chief Little Shells complaint continued that he had not been negotiated with and had not sold or ceded any land to the United States let alone where the reservation was placed. The act of creating the Reservation in 1882 was in violation of the 1789 Northwest Ordinance Article III as well as the 1834 Indian Non-Intercourse Act, and the United States Constitution as the 1863 Treaty of Old Crossing retained for Chief Little Shell all lands west of what was ceded in the Treaty.

*to other parties.” (Fed. Power Comm’n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960); see also 73 A.L.R. Fed. 2d 221 (Originally published in 2013).*

*Although the purpose of the Indian Non-Intercourse Act is viewed by some as outdated, the U.S. Supreme Court in 2005 noted that the Act “remain[s] substantially in force today . . . [and] bars sales of tribal land without the acquiescence of the Federal Government.” (City of Sherill v. Oneida Indian Nation of New York, 544 U.S. 197, 204 (2005).) **Thus, by virtue of the Act, the federal government or a court may vacate the disposition of Indian lands made without a federal statute or treaty that authorizes the challenged conveyance.” (See, e.g., Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 672 F.3d 1021 (Fed. Cir. 2012) (invalidating an unauthorized lease to a third party for oil and gas production).***

We address you as the Grand Council of the Little Shell Band of the Pembina Chippewa who remained in our ancestral homeland and live primarily at Spirit Lake where Chief Little Shell I is buried, in what is northern North Dakota. Our band is a Council Fire Keeper of the Great Chippewa Nation whose origin is documented in the Birch Bark Scrolls of Pottawatomi Elder Shup Shewana dated to 796 A.D.<sup>1</sup> and our culture was governed by a Grand Council and a lineal Chieftainship as outlined on October 24, 1892, by Chief Little Shell III, Chief Red Bear II and the Pembina Chippewa Grand Council in a Protest Letter to the President of the United States regarding the McCumber Agreement, which they DID NOT SIGN.

We as a Band maintain the Chieftain ring and 1862 Presidential Peace Medallion of the Chief Little Shells and we as well maintain the burial site of Chief Little Shell I at Grahams Island, Spirit Lake.

We are one of the parties involved in all cases related to the Pembina Chippewa which also include per designation in prior case law and outlined in this case the Turtle Mountain Band, the Little Shell Band of Montana, the Red Lake Band and the ‘Other’ or unenrolled lineal Pembina Chippewa descendants who don’t affiliate with the aforementioned bands or who reside on other reservations. The ‘Other’ designation deceptively cultivates a perception of disorganization which suggests dismissiveness to the families comprising other bands such as the Little Shell Band whose Chief was the Principal Chief involved with all Pembina Chippewa and whose history includes signing the 1863 Old Crossing Treaty but refusing to sign the 1892 McCumber Agreement.

The issue of Federal Recognition which has designated our band as ‘Other’ is incorrect as Federal Recognition comes by way of all three branches of Government and not just in accepting a reservation agreement which occurs under the 1789 Northwest Ordinance by Indians willfully selling their land or losing their land through a just war. U.S. Law outlines the United States Government is constrained by the guidelines of the Indian Non-Intercourse Acts outlined from 1790 to 1834, which designated Congressional Commission and treaty or agreement as the only means to execute the provisions required in the 1789 Northwest Ordinance regarding obtainment of Indian lands.

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<sup>1</sup> Sapp, Rick. 2021. Native Americans State by State: Includes Canadian First Nations, Metis and Inuit, Chartwell Books.

In 1884 the Turtle Mountain Indian Reservation was diminished by Executive Order reducing its size by 90% to its current location at Belcourt, North Dakota. This action compressed a large population of Canadian Indians into a 6 mile by 12-mile area which had prior only been inhabited by Pembina Chippewa, who as a result became outnumbered significantly.

The diminishment of the Reservation was in violation of the law as *Murphy v. Sharp* (2020) and *McGirt v. Oklahoma* declared that only the United States Congress could diminish a reservation. Therefore, the Turtle Mountain Reservation should be restored to its original boundaries established in 1882 however it will not because the 1882 reservation creation was unlawful.

Honorable Judge Hogan, how can the Executive Branch of the United States Government create a reservation on unsold, unceded and unconquered Indian land, without Congressional Commission Agreement or Treaty for said land? According to *Jones v. Meehan* (1899) and the Indian Non-Intercourse Acts of 1790 to 1834 it cannot.

We clarify to the Court that we are not the Little Shell Band of Montana. We are the Little Shell Band that remained in our ancestral homeland in what is called North Dakota.

Regarding the Montana group, they outline in their history, and we also concur, that in 1896 Chief Little Shell III and the Grand Council sent approximately 700 Little Shell Pembina Chippewa to secure ancestral hunting grounds in Montana. This group was unfortunately detained at the International Border by then Colonel Pershing who forced them onto trains and sent them to Canada, whereby they walked into Montana where they reside today.

The Montana group obtained a separate reservation in December of 2019; however, it was noted in the 2009 initial reservation request rejection by the U.S. Government that 11% of the tribe have no lineal descent to the Pembina Chippewa.

Our group is the Little Shell Band that departed Belcourt and camped at what is called Dunseith and then continued on to Spirit Lake where our ancestral capital was and where Chief Little Shell I is buried on Grahams Island.

We declare that the United States Government has never reengaged negotiations with the Little Shell Band for the lands Chief Little Shell III, Chief Red Bear II and the Grand Council of the Pembina Chippewa declined to sell in 1892 and **we challenge the United States Government, which is now represented by this Court to prove otherwise.**

In the last 50 years we have however found ourselves pulled into other U.S. Government negotiations in the scope of Federal Lawsuits beginning in 1974 with *TMBCI v. United States* and others such as this case, as other reservations who have Pembina Chippewa members seek disbursements. Consequently, we are forced to engage the U.S. Government from the 'other' designation in order to reestablish that our grandfathers and we as their heirs have never signed or sold anything, and we have neither asked for a reservation since our band officially Censured the United States Government in December of 1893.

**We have however asked the United States Government to observe their laws regarding the obtainment of Indian land and our right to follow the traditions we have taken upon**

**our families and tribal Band with the Official Censure of the United States Government in December of 1893.**

We believe that if the Court grants a disbursement in this case presented before the Court at the request of other bands it would unlawfully conclude the McCumber Agreement against Chief Little Shell III, Red Bear II and the Grand Council who rejected the agreement. It would be a judicially forced agreement upon our Band in violation of the 1834 Indian Non-Intercourse Act and Article III of the 1789 Northwest Ordinance, when we have not accepted nor asked for any agreement to be made.

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**Regarding the McCumber Agreement**

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The McCumber Agreement pertains to negotiations between the United States Congress and Chief Little Shell III and Grand Council in 1892.

This was the second commission seeking the sale of Chief Little Shell's land holdings. The first commission was organized with the Indian appropriation act of August 1889.

The First Commission negotiated until it closed in failure on February 9, 1891.

However, the State of North Dakota was created on November 2, 1889, and included Chief Little Shells Lands while Federal negotiations were still being conducted and no title to land had been transferred. This is in violation of the 1834 Indian Non-Intercourse act whereby states were prohibited from engaging in Indian land procurement while the Federal Government held preeminent jurisdiction for sale negotiations or was in negotiations by treaty or agreement for it.

By the Final Negotiations in October 1892 Chief Little Shell had been negotiating for 3 years with the United States Congressional Commissions for his land holdings, while the state of North Dakota and United States were selling the deeds to it, incorporating the land into counties, and stripping away timber and mineral resources.

In an act of further insult, the United States Commission was offering 10 cents per acre when the treaties made with the Sioux tribes in the state over the prior decade had ranged from 1.25 to 1.75 per acre.

On January 7, 1891, during the first Commission, Chief Little Shell III declared the boundaries of his original claim:

“On the north by the national boundary between the United States and British possessions; on the east by the Red River of the North; on the south by the Cheyenne River to its head waters or source; thence in a west-northwesterly direction to the headwaters of the Little Knife River, a tributary of the Missouri River; thence due north to the national boundary between the United States and the British possessions.”

A month later on February 9, 1891 the first Congressional Commission was closed declaring failure.

The Grand Council issued a statement January 29, 1892 declaring that

“All lands west of lands ceded to the United States on October 2, 1862, and supplemental treaty of April 12, 1864 have never been sold or conveyed and that our title thereto has never been in any way extinguished.”

Final Negotiations were held between the McCumber Commission, Indian Agent John Waugh, Interpreter Joseph Rollete and Chief Little Shell III and Grand Council at the Turtle Mountain Indian Reservation.

On June 12, 1892, the Commissioner of Indian Affairs issued R.G. 75. DOC. 26341, a letter instructing the McCumber Commission of the objectives to obtain Chief Little Shell's land at all costs and directing the Commission to create 'a more compliant council' should Chief Little Shell III refuse the agreement presented.

In September of 1892 the McCumber Commission and U.S. Agent John Waugh created their own council of 32 Indians on the Turtle Mountain Indian Reservation. At the same time John Waugh issued a letter to County Judge John Burke and Tribal Lawyer and Member J.B. Bottineau (son of 1863 Treaty Signer Pierre Bottineau), whereby the Commission stated that Chief Little Shell III would not be allowed any legal counsel at the coming final negotiations set to occur in October 1892.

At the Final Negotiations Chief Little Shell III asked for his lawyer and John Burke to be present. The Commission agreed that he could have them present, while simultaneously holding County Judge John Burke and Tribal Lawyer J.B. Bottineau at gunpoint at the reservation border.

These are vitiating elements contrary to contractual law, the Indian Non-Intercourse guidelines and alone invalidate the negotiations.

Chief Little Shell III and his council rejected the agreement and then departed the reservation with the Little Shell Band and camped west of Belcourt in what is called today Dunseith, North Dakota. Members of the Little Shell Band then departed towards Montana, Eastern lands near the North Red River and south to Spirit Lake where Chief Little Shell I is buried at Graham Island.

After Chief Little Shell III and the Pembina Chippewa government left the reservation the McCumber Commission and Agent John Waugh had the U.S. Created Council of 32 sign the agreement, thereby ceding the land the reservation was on (for ten years) and all lands outside the reservation or approximately 9 million acres. Additionally, it is recorded by the U.S. Government and in complaints by Chief Little Shell that the Commission with interpreter Joseph Rollette and Agent John Waugh created their own membership rolls regardless of Indian or Pembina Chippewa descent and refused to accept the actual rolls as presented by Chief Little Shell and his Grand Council of the Pembina Chippewa.

Immediately on October 24, 1892 the Pembina Chippewa government who had dealt with the United States Government in all negotiations from 1849 to 1892 issued a Letter of Protest to the President of the United States and Congress.



**Subsequently the McCumber Agreement was not ratified by Congress.**

On December 6, 1893 the Pembina Chippewa Government issued an Official Censure of the United States Government for vitiating actions involved in the 1892 McCumber Agreement.

In 1903 Chief Little Shell III died while visiting family at the Turtle Mountain Indian Reservation. His son became Chief Little Shell IV. Within a year, in 1904 the United States Congress ratified a single page document titled the Davis Agreement in which referenced the 1892 McCumber Agreement.

In 1905 the Turtle Mountain Indian Reservation, which was created illegally, and which was led by a council created by the negotiating United States Congressional Commission in 1892 for the purpose of signing the McCumber Agreement after Chief Little Shell III rejected it, would then re-agree to the McCumber Agreement.

Simple questions would be:

1. How the Turtle Mountain Indian Reservation is valid when it was created without treaty or agreement in violation of Indian Non-Intercourse Acts 1790 to 1834?
2. How the State of North Dakota of the Federal Government were doing anything with Pembina Chippewa lands from November 2, 1889 to the Davis Agreement ratification in 1904?
3. How the 1904 Davis Agreement is valid when the title and occupancy holders did not sign the McCumber Agreement and it is likewise a violation of U.S. Contract and Indian Law for a negotiating commission to create an agreeable partner after title and occupancy holders reject negotiations.

I remind the court prior to executing this settlement agreement that:

According to Article III of the 1789 Northwest Ordinance which was enacted with the 1789 United States Constitution:

“Their (Indian) lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress”

We implore the court not to violate our Constitutionally Protected Treaty Rights which are also outlined under International Law which we claim for ourselves from the United Nations Declaration of the Rights of Indigenous Peoples UN Resolution A61/295, clearly understood in Article 26.

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

We believe that this Court lacks the jurisdiction to legislate a forced Agreement upon our Little Shell Band of Pembina Chippewa who are in North Dakota and representing the customs and traditions of our fathers who were the Council of Chief Little Shell who did not sign the McCumber Agreement, the very same who also Censured the U.S. Government in 1893 and who per U.S. Law still retain their title and occupancy rights until a commission enacted under the 1834 Indian Non-Intercourse Act speaks with the Little Shell Band to obtain land holdings guaranteed under the 1863 Old Crossing Treaty.

If the Court allows disbursement in this case the Judicial Branch would immediately cause an injury to the Little Shell Band and violate the 1834 Indian Non-Intercourse Act as the Court would be legislating Chief Little Shell III's approval to the 1892 McCumber Agreement, which he and his Grand Council rejected and did not sign, and we as lineal heirs would receive an injury from the Court.

We likewise declare that the stated amount of 59 million dollars was never agreed to by our Band and is miniscule in relation to the actual value of the land, which as farm land is the highest quality in the continental United States in addition to the valuable mineral and oil deposits therein.

We therefore ask the court not to conclude an agreement with the Little Shell Band that was never negotiated, agreed upon, or signed by the Little Shell Band of Pembina Chippewa.

We sign this as the lineal descendants and the families of renowned Pembina Chippewa Chiefs Old Wild Rice, Chief Little I, Chief Little Shell II, Chief Little Shell III, Chief Red Bear I, and the Lineal Descendants of the 1863 Old Crossing Treaty signatories of the Grand Council and Pembina Warrior Joseph Montreuil.

To this end, we do hereby appoint in accordance with tribal resolution 2020-004 Breanna Delorme, a mother of our blood relations and a member of our tribe, our counselor and tribal attorney to appear or respond for us with the appropriate United States Department or Branch of Government, or any Courts thereof.

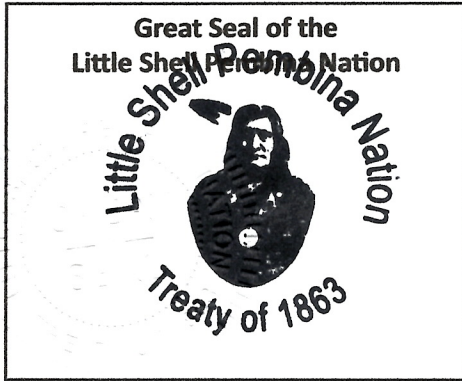
IN TESTIMONY WHEREOF; I have hereunto set my hand and caused the great seal of the Little Shell Pembina Nation to be affixed at the traditional Capital area of Spirit Lake, North Dakota.

Dated this 2nd day of Sept. 2021



Karyence Ronald Delorme Sr.

Little Shell VII, Principal Chief of the Little Shell Band of the Pembina Chippewa of the Great Chippewa Nation



As witnessed by appointed Tribal Attorney:

Breanna Delorme

Breanna Delorme Attorney-at-Law  
Federal/State/Indian Law

**Presidency of the Grand Council and Special  
Advisors:**

Edward J. Johannesson

Edward J. Johannesson, Special Advisor to the Little Shell Chief

Keith Delorme

'Asinii Winini' Keith Delorme, Grand Council

David Taylor-Barker

'Midegah' David Taylor-Barker, Grand Council and Tribal Ambassador

Waylon Delorme

'Niigaanii Ogichidaa' Waylon Delorme, Grand Council and Chief Soldat

Glen P. Delorme

Glen P. Delorme, Grand Council

Leo Delorme

Leo Delorme, Grand Council