

BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF INDIANS OF)	
OKLAHOMA,)	
)	
and)	
)	
WILLIAM OVERLAND, METHA COLLINS,)	
and JOHN WILLIAMS, as represen-)	
tatives of the PONCA TRIBE and)	
all the members thereof,)	
)	
Petitioners,)	
)	
v.)	Docket No. 322
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 26, 1963

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The petitioners in this case before the Indian Claims Commission are the Ponca Tribe of Indians of Oklahoma and three individuals, William Overland, Metha Collins, and John Williams, all members of the organized petitioning tribe. The tribe is incorporated under the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) and its contract with counsel has been approved by the Secretary of the Interior.

While the Ponca Indians divided into two separate groups after their removal to Oklahoma, the events of which the petitioners complain took place prior to that division. The petitioners are entitled to maintain this action in a representative capacity on behalf of the Ponca Tribe as it existed when its lands were alleged to have been taken by defendant.

2. The petition herein was timely filed on August 10, 1951.

In the petition claims were made under each of the five sub-sections of Section 2 of the Indian Claims Commission Act and involved the taking from the Poncas of certain lands to which they asserted aboriginal title. They further allege that the taking was accomplished in part by the Treaty of March 12, 1858 (12 Stat. 997) by which the Poncas ceded to the United States any and all claims which they might have had to all land claimed by them; in part by the Fort Laramie Treaty of September 17, 1851 (11 Stat. 749) by which the United States allegedly acknowledged a portion of Ponca lands as belonging to Sioux; and in part by the Treaties of March 16, 1854 (10 Stat. 1043) and September 24, 1857 (11 Stat. 729), by which the United States obtained from the Omaha and Pawnee Tribes lands to which the Ponca allege title.

3. The Area Claimed

The petitioners in the petition filed herein alleged that "During the first half of the 19th century, the Ponca Tribe owned and occupied a tract of country in South Dakota and Nebraska." This tract, they allege, was bounded as follows:

Beginning at the point where the Ayoway River flows into the Missouri River; thence southwesterly up along Elk Creek to the old Omaha village on the Elkhorn River, thence west to the Black Hills; thence northeasterly along the line of the Black Hills to the source of the White River; thence easterly along the White River to the Missouri; thence southeasterly down the Missouri River to the place of beginning.

In petitioners' Proposed Findings of Fact filed with the Commission on December 18, 1961, the area which they allege was ceded is described as bounded

on the north by the Missouri River; on the west by the Fort Laramie line, a straight line drawn from the mouth of the White River to the forks of the Platte; on the south by the divide between the waters flowing northward into the Niobrara River, and into the Missouri River east of the Niobrara, and the waters flowing southward into the Elkhorn and Platte Rivers; on the east by a line running southwesterly from the mouth of Aoway (Iowa) Creek to the divide described above.

Petitioners also assert that an additional area belonging to the Poncas, described as lying between the Fort Laramie line and drainage areas of the several streams west of the line, was wrongfully ceded by the Sioux under the Fort Laramie Treaty of September 17, 1851 (11 Stat. 749).

In addition, petitioners claim for the Poncas an area lying within the Omaha cession of 1854, divided by the due west line drawn from the mouth of Aoway Creek and lying to the north of that line.

The area involved in this claim was a part of the lands acquired by the United States from France in 1803 under the Louisiana Purchase.

In 1817 the United States entered into an agreement of "peace and friendship" with the Ponca Tribe under which the tribe acknowledged the protection of the United States and renounced all other sovereignty.

(7 Stat. 155)

On June 9, 1825, a treaty was signed by both the Ponca Indians and the United States under which the Ponca Tribe accepted the supremacy and protection of the United States, which in turn agreed to extend friendship and protection to the Poncas "and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States." (7 Stat. 247)

The Treaty of March 12, 1858 (12 Stat. 997) provided, inter alia:

Article I. The Ponca tribe of Indians hereby cede and relinquish to the United States all the lands now owned or claimed by them, wherever situate, * * *

4. Physical Characteristics of the Area Claimed

The area claimed by the Poncas contains diverse types of land. The immediate valley of the Missouri River is flanked by rugged hills, deep and narrow ravines and gullies which run directly into the river, and accordingly were not suitable for settlement by either agricultural or mounted Indians.

The plains began west of the area in which the Niobrara River flows into the Missouri. East of the 99th Meridian hardwood forests grew along the rivers, prairie grass and edible plants in the more open area. There was also an abundant supply of wild animals.

West of the 99th Meridian were the great plains with a lush growth of buffalo grass on which great herds of buffalo grazed. In this area Indian agriculture was non-existent and the area between Ponca Creek and the White River was used by the Indians only for hunting and not for permanent habitation.

To the south between the Loup Fork of the Platte River and the Niobrara were, and are, to be found the great sand basins which were avoided by the Indians and early settlers because of lack of water and extreme difficulty of travel.

To the northwest of the mouth of the Niobrara the country became more barren and rocky with few trees except along the river beds, and cactus and yucca plants predominate. Between Ponca Creek and the White

River to the northwest there was an arid, stony desert-like area which was almost impossible to cross and, where it was reported by early explorers, there was no water to be found for 50 miles.

5. Prehistoric Period

There seems to be little doubt that the Poncas were, in prehistoric times, a part of a larger tribe or nation. Tradition has it that the Omahas, Osages, Kaws, and Poncas lived together near the Atlantic Ocean; that they migrated west through present St. Louis, up the Missouri River to northeastern Nebraska. Another version of the tradition has it that the Omaha, Poncas, Osages, Kaws and Kickapoos separated at the mouth of the Ohio River; that some settled there while the remainder went upstream of the Missouri. There seems to be sound basis for the theory that the Omahas and Poncas were one tribe and remained so until well into the 18th century, and they ranged the area between the Missouri River and the Black Hills. Ponca legend has it that they separated after trouble arose when they were occupying the village on Bow Creek.

Some historians are inclined to believe that the Poncas and Omahas as one tribe lived in northern Iowa before 1670, and about 1730 moved to the west side of the Missouri River into northeastern Nebraska where the Poncas built a village north of the Niobrara, while the Omaha gathered to the south between the Missouri River and the Platte River. Although the Ponca did not appear in history as an entity before the 1700's, it is believed that they existed for years before in connection with social organizations of the larger tribe. It has even been suggested that the Ponca had a separate tribal existence by 1390 and that is based upon a

story related in the 1880's when the Poncas stated they were in the era of the "seventh old man", and calculating a man's life expectancy at 70, for 490 years or thereabouts.

In 1785 the Poncas are known to have had a village on a small river below the mouth of the Niobrara River, which has been construed to have been Bazile Creek.

From 1785 to the date of the 1858 treaty it is apparent that the Poncas followed a pattern by which they returned to various sites on Bazile Creek, Ponca Creek and the Niobrara River, set up their villages, planted their crops, and then departed from these sites on their two hunts. At these sites were located, as a matter of course, their burying grounds.

6. Physical Characteristics

The Ponca Indians were strong and of more than medium stature. They have been described as "strong and fleet" and had the reputation of being the best horsemen and hunters. One observer stated that they resembled Arab Bedouins.

7. Warlike Tendencies and Aggressive Spirit

The Poncas enjoyed a reputation dual in character. On one hand, as late as 1825, it was reported that they were friendly to the whites, while another observer in 1819 stated that they were a "wandering tribe, naturally ferocious and cruel", and in 1822 another reported that the Omahas and Poncas were "the best Indians on the Missouri". Earlier they were described as "nomadic, naturally ferocious and cruel, killed without mercy those they might meet on the road", although if they found themselves inferior in strength they made friends.

Although in early years they apparently enjoyed a good reputation, they soon lost it by commission of acts of violence and depredation and acquired a reputation of being a most troublesome tribe. One historian indicated that they were considered offcasts, little respected and scarcely recognized by adjoining tribes.

8. Ideology, Ceremony and Mythology

The Poncas have been described as an exogamous group, determining descent through the male line only. There were generally conceded to have been seven gentes among the Poncas, each having differing customs as to cutting hair, marking of arrows and work within the tribe, such as keeping of ritual songs, cure of pain, caring for war pipes, directing councils of war, and hunting of deer and buffalo.

The Poncas in the earlier years are reported to have lived in semi-permanent earth huts when resident in their villages, and in tents made of skins when on hunts. They camped in a circle with the opening to the east, with the members of the various gentes grouped according to their duties.

Kinship played an important part in all social intercourse. A man had a right to marry his wife's sister, as well as her nieces and aunts. Further, he was under an obligation to marry his brother's widow. Such regulation of marriage served to hold the family intact and provide for care of children by close relatives rather than by strangers.

Men and women were socially on a moral equality, but the women

were responsible for the tent-making and raising of the tent villages according to traditional patterns.

Children were taught to treat their elders with respect, to be peaceable one with another, and to obey their parents. Politeness was stressed and they were trained not to be aggressive, and politeness was generally observed in the family as well as in the presence of strangers.

Within the tribal structure the various societies were of great importance. The dancing societies were of especial importance and of the dances known to have been performed the sun dance appears to have been of greatest significance. It included sungazing, the sunrise dance, various forms of torture, flesh sacrifices, animal and food offerings. Also, the Poncas played various games including one with a ball which was painted to represent the earth.

The Ponca legends contain no records of ceremonies or activities centering around the maize as was true with many tribes, but rather the importance of the hunt was predominant.

9. Socio-Political Organization

There is some uncertainty as to the question of chieftainship among the Ponca, there apparently being both hereditary and elected chiefs, the hereditary succeeding to that status through their fathers.

It is known that during the hunt there were two principal chiefs, one from each of two gentes who acted as leaders of the hunt.

10. Archaeological Assemblage

It is generally agreed by authorities on Indian culture that archaeological evidence as to the Poncas is intermingled with that of the Omaha. The Ponca and Omaha were at one time a single tribe and they continued to resemble each other even after separation so that the villages are not easily distinguishable.

In 1935 it was reported by archaeologists that no "documented historic sites of the Ponca tribe had been excavated, and in 1949 it was reported that remains probably attributable to the "Omaha, Ponca * * * and other tribes of history have been or are under scrutiny."

The "Ponca Fort Site" excavated by the University of Nebraska expedition in 1936 and 1937 yielded material which, when analyzed, showed three components, one prehistoric and two protohistoric in age. One of the components has been identified as Ponca, ca. 1790 and 1802. As to the other components, it was the opinion of the archaeologists that too little was known of other neighboring tribes to make a specific identification.

As a result, there appears to be no documentation which would establish beyond a doubt the tribal identity of the Poncas prior to 1785, their first appearance in recorded history.

Historical contact with the Poncas and penetration into Ponca territory did not come until close to the end of the 18th century, and by that time the Poncas were in possession of horses.

11. Population

There is a great diversity in the information concerning the size

of the Ponca Tribe, but there is no doubt that in comparison with the surrounding tribes it was small in number.

In 1802 Vilemont reported 50 men bearing arms, and in 1804 Lewis and Clark reported that although the Poncas once had 400 men, they were then reduced to about 50. However, in the same year Chouteau reported that the Poncas had "250 hombres." In 1804 Perrin de Lac reported that the Ponca Nation had 350 warriors "notwithstanding the ravages of smallpox." In 1811 Brackenridge reported that the Poncas were made up of 80 warriors, 450 souls "on the Missouri at the Qui Coure," and in the same year the Louisiana Gazette reported that the Ponca numbered "300 warriors and 1400 souls."

In 1820 Jedidiah Morse stated as to the Poncas "Their number is 750," but a table attached to his report shows the Poncas, among other Indian tribes, to have "number of souls, 1250." Later in 1822 he reported the Poncas numbered in all 1750.

In 1832 the Poncas were represented as having 300 warriors. In 1836 Gallatin stated that "The population . . . of the Omahas and Puncas is estimated at 2000." In 1841 the Annual Report of the Committee on Indian Affairs stated that the Ponca's population was 900, and in 1844, 777.

Throughout all comparative references to size of tribes, emphasis is placed upon the small population of the Poncas in comparison to the Omaha, Sioux and Pawnee tribes which surrounded them.

This Commission finds that the population of the Ponca Tribe of Indians was in the neighborhood of 1000 people.

12. Traditional Pattern of Life

The pattern of life followed by the Poncas appears to have changed through the years. In 1796 they were reported to have fixed dwellings at "two leagues above the mouth of the Niobrara on the West side of the Missouri." Further they were reported as not sedentary or cultivators of land, but rather a wandering tribe which lived by hunting.

In 1801 they were reported to have begun to cultivate corn, pumpkins and potatoes, and in 1804 they were called "tillers of the soil who hunted deer and beaver." Another observer in 1804-1806 reported that they had joined with the Omahas and "become a wandering people."

In 1822 it was noted by a traveller that the Omahas and Poncas lived upon the hunt of buffalo, beaver and otter and also raised some maize.

By 1825 the Poncas were said to cultivate corn, pumpkins, etc., and to leave their village in the spring and fall for the chase, hunting to the west and northwest for buffalo.

By 1835 they are reported to have abandoned cultivation and to depend solely on the hunt. This was attributed to frequent raids on their fields by the Sioux. Another observer reported the Ponca as a small band, inhabiting the country of the L'eau qui Court and existing by the chase entirely.

By 1855 they were reported to raise considerable corn on both sides of the Niobrara while another historian stated they planted corn to some extent but wandered toward the Platte and their land was being settled by squatters.

Accordingly, this Commission finds that the Ponca were primarily Indians who lived by the hunt, supplemented by agriculture.

13. Hunting - Trading

From the available evidence concerning the habits of the Poncas, it is apparent that their life pattern was established around hunting and trading with other tribes even before the coming of the white man. These hunts ranged over the central Great Plains to the Rockies, often crossing intertribal boundaries in which case they became subject to the regulations of the host tribe.

The slaughter of buffalo was considered a community industry, with all the able-bodied members of the tribe moving in a body from place to place in search of the herds, setting up temporary villages from time to time.

With the acquisition of horses the hunts ranged farther than before when their only beasts of burden - other than women - were dogs.

According to legend the Poncas first encountered horses with the Padouca, or Comanche, and that when they first saw the Padouca mounted on strange animals they thought men and animal were one. At first, not knowing the uses to which the horses could be put, the Ponca killed both horses and men in battle. Later, after Poncas and Padouca made peace, visits were exchanged and the Ponca bartered their stronger bows and arrows for horses, and the Padouca taught the Poncas how to ride and place burdens on the horses.

From barter of buffalo, elk, deer, beaver, otter and other skins, they obtained fuses, powder and lead, kettles, knives, etc., and under

continued harassment from the Sioux they gave up cultivation for almost complete dependence on the hunt. Fishing was done by members of the tribe but this constituted a minor factor in their economy.

In 1758 trade with the Sioux was carried on by both the British and French from posts situated around the Great Lakes. The French had explored the Missouri River from its mouth to the Mandan Villages except for a stretch "above the Platte and below the White or Cheyenne River." It was in this area that the Poncas were generally found, and this is evidently one of the reasons for the lack of knowledge on the part of the white man concerning the Poncas.

In 1764, 1767 and 1775 the list of Indian nations with whom the Spanish were accustomed to trade on the Missouri River was headed by the Omahas, but no mention was made of the Poncas and the same was true as late as 1784. Not until Governor General Miro's report in 1785 did the Poncas become recognized as an independent nation, and not until 1790 did their trade assume any importance. Even after that date much of their trade was carried on through the Omahas.

In 1793 the request for exclusive trade with the Poncas through the "Missouri Company" was made, and in 1789 or 1790 the first trading through St. Louis Fur Trade and the Ponca community as an independent entity took place, although it is reasonable to surmise that British and French traders had been among them earlier. Also it follows that if it was customary for the Poncas to take their furs to the Omaha villages when traders were there, no mention of the Poncas would necessarily have been made.

In 1840 one license was issued for trade with the Poncas. In 1841 only one license was issued solely for Ponca trade, but two traders licensed with the Sioux were permitted to trade with the Sioux and the Ponca at the mouth of the Snake River on the Niobrara. In 1842 four companies were issued licenses to trade with Sioux, two on the Niobrara, a third at the mouth of the Niobrara, and a fourth at "leau qui Cour Fork of the Big Platte."

Accordingly, it appears that trade with the Poncas was not greatly sought nor was it considered of such size or value as to warrant individual licenses as a general rule, but rather trade with the Ponca was conducted through and in conjunction with other tribes.

14. Gardening and Gathering

When the Poncas first became known in 1785 they were described as a wandering tribe; in 1796 they were further described as living by the hunt; but in 1804 they were called tillers of the soil who also hunted deer, beaver and bison and lived by seasonal activity. Again in 1805 they were said to be wandering and not raising crops. The pattern of their lives seemed to undergo various changes, but underlying all of it was the planting and original cultivation of corn and pumpkins by the women in the spring, leaving of village and crop to go on the summer hunt and returning in time to harvest. According to observers both men and women worked in the harvesting of the crops in the fall - usually October. However, agriculture was considered secondary to the hunt.

The harvest consisted of gathering wild fruits, roots, herbs, berries and nuts. Herbs were collected and dried for their medicinal and magical

properties. Cultivated crops consisted of maize, or corn, pumpkins, beans, watermelons and squash.

15. Dwelling, Furniture and Implements

The Poncas lived in lodges made of earth at their permanent villages. These were circular in construction with walls about eight feet high, a dome-shaped roof with a central opening for escape of smoke and letting in some light. The opening generally faced the east. Willows overlaid with grass and sod were used to roof the lodges, and an entrance way six to ten feet in length extended from and was made a part of the lodge, with a curtain of skin hung at the inner and outer doors. Couches were arranged around the walls and used as seats during the day and as beds at night. Winter supplies of food were placed in a cache usually located near the entrance.

The tipi, or temporary dwelling, was a conical tent made of dressed buffalo skins, made, set up and cared for by the women. This was typical of the plains Indian culture and was used by all tribes at least a portion of the year. Fires were built in the center with beds spread on the ground. While considered temporary, they were generally more comfortable and warmer than the dirt lodges.

Boats were made of buffalo hide, and from all accounts were not the swift narrow canoes associated with Indians but rather were tub-like.

With the coming of the horse the Poncas made wooden saddles wrapped with hide, and bridles, reins and halters of strips of hide, lariats made of hide, whips of wood and hide, and lassoes made of buffalo hair. These were carefully made and treasured. Included in travelling gear were snowshoes and a staff and straps for carrying loads.

16. Location - Use and Occupation

The Poncas first appeared as an individual entity in 1785 when it was reported by Governor General Miro that a Ponca village was located a league below the Niobrara and a league from the Missouri on a small river (Bazile Creek). In 1793 Juan Munier requested permission to trade with the Poncas at the mouth of the L'eau qui Cour. In 1794 a village was reported by the trader, Clamorgan, on the bank of the Missouri about thirty leagues above the village of the Mahas, and another trader reported a village a league above the Niobrara near the Missouri. In 1795 a village was located about one-half a league from the Missouri River. In 1796 the village was variously described by Trudeau as being two leagues above the Niobrara, and by Collot on the west bank of the Missouri and at the mouth of the Niobrara.

From 1796 to 1797 the location of the Ponca village was variously reported to be on the north side of the Niobrara River, and on the north side of Ponca Creek, and on Ponca Creek 1-1/2 leagues from the Missouri. James Mackay, in ascending from the mouth of the Missouri River to the White River, stated that the "River and Village of the Poncas" was "upon the South bank at a league and a half from the Missouri."

From 1802 through 1804 the village was reported to be located three miles above the Niobrara, between Ponca Creek and Niobrara Creek, on the south side of Ponca Creek, about two miles from the Missouri and their former village, and on the north side of the Niobrara River, three miles from the Missouri River. In 1804 Lewis and Clark reported:

Dispatched two men to the Poncaries Village. Situated in a handsome Plain on the lower Side of this Creek about two miles from the Missouri, the Poncarars nation is small and at this time out in the prairies hunting the buffalo.

In 1805 the Poncas were reported as roving with the Omaha on the plains and on the Niobrara, on the headwaters of White River and Niobrara River, on the plains east of headwaters of White and Niobrara Rivers, and in 1806 on the Niobrara between the Elkhorn River and Ponca Creek.

In 1811 the Ponca village was reported to be four miles below the mouth of the Niobrara, and in 1809 by John Bradbury at or near the mouth of the Niobrara.

Brackenridge, in Views of Louisiana, reporting his journey up the Missouri stated "The only fixed or agricultural villages on the Missouri are those of the * * * Poncas * * * and all on the southwest side of the River."

In 1817 the Poncas were described as a small and wandering nation who generally ranged "country of L'eau qui Cours as far west as the mountains in which the river rises."

In 1820 the Poncas were described as having a village on a small creek 180 miles above Omaha Creek, at the mouth of Ponca Creek, and at the mouth of the Niobrara.

Reference is made in 1823 to Ponca villages but no location is given. However a statement was made as to the "Ponca trail" up Ponca Creek over which they travelled to the hunt.

During 1824 and 1825 the Poncas were reported as ranging on the Niobrara to its sources in the mountains, in a village at the mouth of

the Niobrara, at the mouth of Bazile Creek, and as hunting west and northwest of their village. In 1829 they were said to live upon the Niobrara and to own the country to its source. In 1832 they were contacted 300 miles below Fort Pierre, and in 1833 they were reported to dwell on both sides of the Niobrara and Ponca Creek, and further that they formerly lived on Bazile Creek and that Ponca graves were seen near Bazile Creek with an earthen fort several miles up Ponca Creek. However, Sanford in a dispatch to Chouteau, reported a trader had spent the winter with the Poncas at the "head of the L'eau qui coure" and that the nation was later on the Platte River.

During 1834 and the following years until 1843 it appears that the Poncas were constantly moving on the plains of the Niobrara, between the Niobrara and Ponca Creek, out on the plains with the Sioux and in the country north of the Niobrara.

In 1846 the Daily Missouri Republican published an account that "the Sioux attacked Ponca at their village on the L'eau qui Court * * *."

From 1843 through 1848 their activities and villages were apparently at or near the mouth of the Niobrara, but they became wanderers again in 1852, although retaining their village at the mouth of the Niobrara. In 1852 and 1853 there appeared to be two villages, one on the Niobrara and one on Ponca Creek. By 1855 they were raising corn and wintering at the mouth of the Niobrara and venturing up the Keya Paha River to the north and west to hunt. In 1857, just prior to the cession of 1858, they were said to be living on lands "lying on the Niobrara."

In 1856 the Poncas showed a disposition to claim and occupy land

lying between the Ayoway Creek and L'eau qui Cour, or Niobrara River, and in 1858 they asserted they had valid claim to the area between the Niobrara on the south, the White River on the north, the Black Hills on the west, and Ayoway Creek on the east.

17. Cartographic Data

The maps of the area ceded by the Louisiana Purchase in 1803, from the Mississippi River on the east through the plains states are many and varied as to accuracy and detail.

Marquette, in 1673, made no mention of Poncas, nor did Joliet in 1674, the Carte de Louisiane map of 1679, the Franquelin map of 1688, nor an anonymous map dated 1697. In 1701 Le Seuer showed the Poncas as being located south of the Platte between the Oto and Kansa Indians. From 1717 until 1802 there is no location of their village or villages except on Carte de Missouri map where the Poncas were shown on Ponca Creek.

In 1804 Lewis and Clark showed them on Ponca Creek, and in 1805 the map prepared by Zebulon Pike showed them on the Niobrara River.

In 1813 William Clark marked Ponca Creek on his map but did not indicate the presence of a tribe known as Poncas.

The map prepared by Metish in 1818 does not show their presence, but in 1819 Long's map shows them as being located on Ponca Creek.

In 1833 two maps, one prepared by Bartlett and one prepared by McKenny and Hall, show them occupying different areas. Bartlett indicates their presence between the Elkhorn and the Missouri River while McKenny and Hall indicate they ranged between the Niobrara River and the White River.

18. Spanish Period

In 1763 the French transferred the Louisiana Territory to the Spanish but not until 1767 did Spain take possession.

During this period, according to journals of traders, the Poncas were dominated by the Omahas, Chief Blackbird wielding great influence. When Poncas rebelled against his authority he undertook to punish them and to prevent their direct contact with traders. Hence, during this period, the Poncas were little known and their trading was done generally through the Omahas.

19. The French Period

The most complete information available during the period of the French occupation was Truteau or Troudeau, a trader with the Missouri Company. From his writings it can be reasonably concluded and this Commission finds that immediately before the Louisiana Purchase in 1803 the Poncas were settled in an area encompassed by the Missouri River, the Niobrara, and Bazile Creek; that they hunted to the east of Bazile Creek, to the west as far as they could travel, and to the south in a joint hunting area shared by the Pawnee and Omaha as well as the Ponca.

In 1794-1795 a trading post for the Missouri Company was constructed on the left bank of the Missouri River above the Niobrara, and contact between the Poncas and the white man became established.

20. Early American Period

The Louisiana Territory was transferred by Napoleon to the United States on April 30, 1803. The Lewis and Clark Expedition of 1804-06 noted that there were Ponca villages in the area of the Niobrara and

Ponca Creek, deserted at the time of their approach because the tribe was on a hunt on the prairie between the White and Niobrara Rivers.

During the period from 1802-1804 an epidemic of smallpox wiped out great numbers of the population of Poncas and Omahas. The constant invasions made by the Sioux also diminished the Poncas and Omahas.

In 1825 it was reported (American State Papers) that the Poncas were a small tribe consisting of not more than 900 or 1000 souls and not more than 180 warriors; that they lived in a dirt village at the mouth of White Paint Creek three hundred miles by river above Council Bluffs; that they cultivated corn, pumpkins, etc., and left their villages in the spring and fall to hunt in the neighboring country to the west and northwest.

In 1831, in reporting the location of trading posts, the records show a tract of not more than two square miles, commencing at the mouth of the Leau qui Cour and running up the Missouri two miles.

In 1834 the Indian agent, Daugherty, described the Poncas as a small band which spent little time on the Missouri River but rather followed the buffalo on the plains of the Eau qui Cour, or Niobrara River.

In 1838 the Indian agent, Pilcher, described the Poncas as a small band of the Maha tribe who inhabited the country north of the L'eau qui Cour and who led a wandering life, trading at the mouth of the L'eau qui Court, or Niobrara River.

21. Intrusion of Other Tribes within the area claimed by Poncas

As has already been stated herein, the Poncas claimed an area, portions of which were not only claimed by other tribes but have been conceded to have been the lands over which such tribes generally roamed. The Poncas were located between the Omahas on the east, the Pawnees on the south, the Sioux on the west, and the Yankton Sioux on the north.

By 1835 the records show that the Sioux ranged from the mouth of the Big Sioux River on the north and the Niobrara River on the south side of the Missouri as far as the country of the Mandans, east to the Mississippi, west to the Black Hills, and sometimes as far south as the River Platte. The record also shows that as of 1835 the Poncas were dominated by the Sioux, keeping to the plains with them and helping carry on war against the Pawnees. It is logical to conclude that the Ponca lands were from time to time crossed by both the Sioux and the Pawnees.

In 1837 the record establishes that the Yankton Sioux hunted through an area from the mouth of the White River to its sources in the Black Hills, as far south as the Niobrara, and up that river some 250 miles, and sometimes even farther south to the north fork of the Platte River, and up that river to the Black Hills.

The Teton Sioux were clearly shown to range both north and south of the White River, and the Poncas were generally referred to as inhabiting lands lying north of the Niobrara River.

In 1857 the Commissioner of Indian Affairs wrote "Poncas * * * who inhabit and claim a region of country on the Missouri and L'eau qui Court * * *."

By the Treaty of September 24, 1857 (11 Stat. 729) the Pawnees ceded to the United States that area lying south of the length of the Keyapaha River and of the Niobrara River from its confluence with the Keyapaha to its confluence with the Missouri River, and west of the Omaha cession of 1854.

In 1855-1857 one Lt. Warren placed the Poncas near the mouth of the Niobrara and the Brule Sioux on the Niobrara and White rivers, ranging from the Platte River to the Cheyenne River, and thus including lands claimed by the Poncas.

22. The evidence establishes, and this Commission finds, that the Ponca generally hunted in the area between the Niobrara River and Ponca Creek; that they hunted on the south side of the Niobrara with other tribes, i.e., Pawnee and Omaha; that the Ponca were also found out on the plains to the north and west with the Sioux.

Also the evidence establishes, and this Commission finds, that the Ponca villages were at various times located on the Missouri River three or four miles down from the Niobrara River, on Bazile Creek at its mouth, and at times on the Missouri River at the mouth of the Niobrara River and of Ponca Creek.

23. Treaties with Other Tribes Affecting the Poncas

In 1851 the Fort Laramie Treaty was executed by several tribes including the Sioux. This treaty described the territory of the Sioux or Dahcotah Nation as:

Commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork

of the Platte River to a point known as the Red Bute, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

While the Poncas claim right by occupancy of lands lying west of the east line of this cession, there is little evidence of such use. There is substantial evidence of joint occupancy of areas and permissive use of some areas on occasions with the Sioux, Pawnee, Omaha and other tribes.

The Omaha tribe also entered into a treaty of cession with the United States on March 16, 1854, and that treaty inter alia contained provision for protection from the Sioux, and covered lands described as:

all their lands west of the Missouri River, and south of a line drawn due west from a point in the center of the main channel of said Missouri River due East of where the Ayoway River disembogues out of the bluffs, to the western boundary of the Omaha country, and forever relinquish all right and title to the country south of said line * * *

The Pawnee Nation ceded in 1833 all its right to lands lying south of the Platte River, but the steady migration of white settlers along the Oregon Trail disrupted their existence to such a degree that on September 24, 1857, they signed a treaty ceding to the United States all right, title and interest to the remainder of their lands described as bounded:

On the east by the lands lately purchased by the United States from the Omahas; on the south by the lands heretofore ceded by the Pawnees to the United States; on the west by a line running due north from the junction of the North with the South Fork of the Platte River, to the Keha-Paha River; and on the north by the Keha-Paha River to its junction with the Niobrara, L'eauqi Court, or Running-Water River, and thence, by that River, to the western boundary of the late Omaha cession. * * *

Thus, three tribes had, prior to the Ponca cession of 1858, ceded to the United States lands which the Ponca now claim as parts of the land they occupied and used on the east, west and south.

24. Negotiation of the Ponca Treaty of 1858

After the Omaha treaty, numerous Poncas moved from the area of Bazile Creek to the area farther east, even as far as the present day town of Ponca, Nebraska, and asserted the area to have belonged to the Poncas, and they also requested the Commissioner of Indian Affairs to negotiate a treaty in order that they might be paid for all their lands, including those ceded to the United States by the Omaha.

The disagreement as to ownership of lands north of the Ayoway line was heightened by dissension among government officials and by a finding by the Commissioner of Indian Affairs dated July 7, 1856, that title to lands north of Ayoway Creek and west to the Poncas belonged to the United States because of its rejection by the Omahas as a site for their reservation and was open to settlement.

In March of 1857 a second petition was signed by Ponca chiefs and sent to the Commissioner of Indian Affairs, and this brought about an order from the Commissioner that six of the principal men of the tribe should go to Washington to make a treaty. They arrived in Washington in December, 1857, and on December 29, 1857, preliminary discussions were held with Charles E. Mix, the Acting Commissioner of Indian Affairs.

On January 5, 1858, negotiations were begun with the Poncas submitting a proposed treaty in which the lands which they claimed were described as:

all of their lands west of the Missouri River, Beginning at the Big Spring on the Missouri River about eight miles southeast of Aoway river--thence up along the Elk Creek to the Old Omaha Village on Elk Horn--thence in a westerly direction to the Black Hills--thence along the Black Hills to the source of White River--thence down the main channel of said river to where it empties into the Missouri--thence down the main channel of the said Missouri River to the point of beginning.

They asked for annual payments of \$40,000 for 10 years, half in money and half in supplies, and \$30,000 per annum in perpetuity, removal expenses, and other benefits.

The Ponca chiefs asserted the boundaries of the claimed area were based upon the stories of their forefathers concerning their wanderings.

A preliminary draft of the proposed treaty covered lands:

Beginning at the mouth of the river Aoway, thence up Elk Creek to the old Omaha Village on the river Elk Horn, thence westwardly to the Black Hills, thence along the Black Hills to the source of White River, thence down said river to where it empties into the Missouri, thence down the Missouri to the beginning.

The draft was not used, apparently because of the conflict as to the actual extent of the Ponca territory at that time, and in the treaty as signed on March 12, 1858, the area ceded was not specifically described but rather the treaty provided that the Poncas cede and relinquish to the United States all their right and interest to all lands owned or claimed by them, wherever situate, except the tract retained as a reservation. When the treaty was sent to the Secretary of the Interior to be transmitted to the Senate, the area ceded to the United States by the treaty was estimated as 6,872,000 acres, valued at \$455,500, or 6-2/3¢ per acre.

From the ceded area the Poncas reserved a tract for their home, but the description contained in the treaty was incorrect. By the treaty

of March 10, 1865 (14 Stat. 675) the correction of the description was ratified, transferring the western portion of the reservation to the United States and relinquishment by the United States to the Poncas of the eastern portion.

25. Conclusion. of the Commission

Having carefully considered the evidence before it, this Commission, in sum, concludes and finds:

(a) That the Ponca Tribe of Indians was a small but identifiable tribe of Indians which maintained villages along the Missouri River near the mouths of the Niobrara River and Ponca Creek from which they went out into the plains country each summer on organized hunts, returning to harvest their crops in the fall;

(b) That the country through which they generally hunted was bounded on the north by the tributaries of the Ponca River, on the south by the tributaries of the Niobrara, on the east by the Missouri River and Bazile Creek, and on the west by the limits of their capabilities for travel;

(c) That the Ponca Indians did not have aboriginal title to any land west of the Fort Laramie line on September 17, 1851, the date of the Fort Laramie Treaty;

(d) That other areas over which they hunted from time to time, and in which they were seen in the company of other Indian tribes, were the joint hunting grounds of the several neighboring tribes, and were not used exclusively by any one tribe;

(e) That the area which can be properly ascribed as being lands to which the Ponca Tribe held aboriginal title, or Indian title, which title was extinguished by the Treaty of March 12, 1858, is as follows:

A tract of land located within the States of Nebraska and South Dakota bounded on the east by the western boundary of the Omaha cession of 1856, on the south by a meandering line following the divide between the waters of the Niobrara and Elkhorn rivers, on the west by the boundary established by the Ft. Laramie Treaty of 1851, generally referred to as the Ft. Laramie line, and on the north by a line following the divide between the waters of the Missouri River and Ponca Creek and by the Missouri River to the west boundary of the Omaha cession.

(f) That the Ponca Tribe of Indians of Oklahoma have failed to establish that the Ponca Indians held aboriginal title to the balance of the lands included in its claim.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner