BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE OF
THE JICARILLA APACHE RESERVATION,
NEW MEXICO,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

THE KIOWA, COMANCHE AND APACHE
TRIBES OF INDIANS,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: August 26, 1963

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The petitioner is an organized and recognized tribe of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946; c. 949, 60 Stat. 1049; 25 U.S.C.A. Sec. 70(a), et seq., and is authorized to bring this cause of action in a representative capacity on behalf of the Jicarilla Apache Tribe.

The claim herein was timely filed on February 3, 1948, as part of the original petition filed in Docket No. 22 on behalf of "The Apache Nation". The petition, as amended and severed from the original claim
of the Apache Nation and filed separately in Docket No. 22-A on January 9, 1958, on behalf of the aboriginal Jicarilla Apache Indians, conforms to statutory requirements of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049); 25 U.S.C., Sec. 70, et seq.).

2. On April 1, 1951, overlapping adverse claims in Dockets 354 through 358 were consolidated for hearing with the claim herein by order of the Commission on motion of the defendant. The order of consolidation provided the consolidation would not apply to petitioners who should file disclaimers to such overlapping areas so claimed adversely to the claim herein. On May 4, 1959, the petitioners in each of the above numbered consolidated overlapping dockets filed separate stipulations made with the petitioner herein in which the respective overlaps with the claim herein were reconciled and thus common claimed boundaries between said claims were defined.

3. No treaty of cession between the United States and the Jicarilla Apache Indians, nor any agreement or contract of purchase, ever became operative although several were negotiated. None of the lands which petitioner asserts the Jicarilla Apache Indians held by aboriginal Indian title were ever formally ceded, sold, conveyed, or otherwise transferred to defendant by the Jicarilla Apache tribe. After sovereignty of the United States attached to these lands the Jicarilla Apaches were successively assigned reservations by Executive Orders until in 1887 they were finally settled on their present assigned reservation in Rio Arriba County, New Mexico.

4. The petitioner alleges that from time immemorial the aboriginal Jicarilla Apache Indians "up until the time of appropriation by the United
States" owned and exclusively occupied and held aboriginal Indian title
to a vast expanse, area or tract of land in the present states of Colorado,
Kansas, Oklahoma and New Mexico, which it defines as follows:

Beginning at a point on the line between the states of
New Mexico and Texas about where the same is intersected
by the line of 34° 50' north latitude, then westerly to
the crest of the Manzano Mountains about where the line
of 34° 50' north latitude intersects the line of 106° 25' west longitude; thence north to North Sandia Peak, located
about the intersection of the line of 106° 25' west longi-
tude with the line of 35° 15' north latitude; thence north-
easterly to Santa Fe Baldy Peak in the Sangre de Cristo
mountain range, about the intersection of the lines of
35° 50' north latitude and 105° 50' west longitude; thence
northeasterly to the southeast corner of the Taos Pueblo
Grant; thence along the eastern and northern boundaries
of the Taos Pueblo Grant to the northwest corner thereof;
thence southwesterly to a point on the Rio Grande River
about where the line of 36° 25' north latitude intersects
the same; thence southwesterly along the Rio Grande River
to the north line of the San Juan Pueblo Grant; thence
west along the north line of the San Juan Pueblo Grant to
the northwest corner thereof; thence southwesterly to the
northwest corner of Santa Clara Pueblo Grant; thence
following the west line of the Santa Clara and San Ildefonsono
Pueblo Grants to the north line of the Cochiti grant; thence
west following the north line of Cochiti and Jemez Pueblo
Grants to the crest of the Nacimiento Mountains; thence north
with the crest of the Nacimiento Mountains to Nacimiento Peak,
about the intersection of 36° 7' north latitude with 106° 50'
west longitude; thence northwesterly to a point about where
the 37° north latitude is intersected by the line of 107° 20'
west longitude; thence east along the 37° north latitude to
its intersection with 107° west longitude; thence north along
107° west longitude to San Luis Peak, about where 107° west
longitude is intersected by 38° north latitude; thence
northeasterly to a point north of Pike's Peak, in the State
of Colorado about where the lines of 105° west longitude
intersects the lines of 39° north latitude; thence easterly
along the line of the 39° north latitude to its intersection
with the line of 102° west longitude; thence south along 102°
west longitude to the Oklahoma-Texas line; thence west with
the Texas state line to its intersection with the east line
of the State of New Mexico; thence south along the New Mexico-
Texas state line to the point of beginning.
The area of the above described claimed aboriginal lands was reduced in relatively minor proportions by the five aforesaid stipulations. (See Finding No. 2 ante)

5. To the east of the Jicarilla Apaches upon the Llano Estacado (Staked Plains) often were observed the Comanche, Kiowa, and Kiowa Apache bands of bison hunters. To the south of the Jicarillas were the close kindred but often unfriendly Mescalero Apache bands, generally in southeastern and central New Mexico. To the west into present Arizona were the Navajo Indians, also belonging to the Athapascan language family, as were all of the Apache bands of New Mexico and Arizona. The Jicarillas from early Spanish times carried on friendly trade with sedentary Pueblo Indians on the banks of the Rio Grande River, and especially with the Pueblos of Taos, Pecos, and Pecuries. To the north and northwest were the restless eastern Ute bands, the Mohuaches, Capotes, and Tabewaches, who sometimes hunted across present southern Colorado to the buffalo mesas on the east. Utes were of Shoshonean stock that inhabited the Great Basin areas of present Utah and Nevada. From the northeast along the Upper Platte River came the Cheyenne and Arapahoe bands to engage the Kiowa, Comanche and Kiowa Apaches in warfare over buffalo hunting grounds along the upper Arkansas River.

6. The Jicarilla Apache are of the Athapascan linguistic family. This is the most widely distributed Indian language in North America, formerly extending from the Arctic Coast and Hudson Bay on the north, into Mexico on the south, and divided into three divisions: the Northern (Tinne or Dene) Division; the Pacific Division, in present northwestern
United States, which was almost extinct by the middle nineteenth century; and the Southern Division, covering a vast area in present southwestern United States. The Southern Division of the Athapascan family includes the Navajo and those tribes and bands often called "Apache Indians", except the Kiowa Apache who abandoned the Athapascan language in prehistoric times. These Athapascan speaking people migrated from northwestern Canada along the Rocky Mountains into the American southwest between 1000 and 1500 A.D.

The Jicarilla Apaches' dialect is more closely related to the Mescalero Apache than to the Navajo and Arizona Apaches, the latter being "Western Bands of Apache Indians" as distinguished from Mescaleros and Jicarillas or "Eastern Bands of Apache Indians".

"La Xicarilla" is a Spanish word meaning "Little Basket". The name was given to antecedents of the modern Jicarilla Apache by the Spanish in the early eighteenth century because of their expertness in making vessels of basketry.

The term "Jicarilla Apache" as herein used refers to that tribe, group or bands of Indians who became residents of the Jicarilla Apache Indian Reservation in New Mexico on or about 1887.

7. The ancestors of the Jicarilla Apache Tribe were several bands of Indians recorded in early chronicles of Spaniards sometimes called by the name of the band's chieftain; at other times identified by the name of their location, or by ecological practices of the band or group so mentioned. These Apaches are recorded as inhabitants of the general locale of the corners of the present five state area in and contiguous to the area here claimed. Some of these ancient bands in time became
amalgamated in whole or in part with the aboriginal "La Xicarilla", and thereafter became identified as the Jicarilla Apache Tribe.

8. These bands of the Athapascan speaking people, who later became known as the Jicarilla Apache Tribe, settled in certain locations in the claimed area after their migration from the north in the eleventh century. Although they continued to maintain much of the common culture of the other Athapascan groups who settled in other regions of the American southwest, their culture and ways of life were also modified in many ways. The advent of the bison and the introduction of the horse influenced the life and movement of the Jicarillas, as did differences in terrain, contact with other groups, such as the Pueblos, etc. Over a period of many years of such influences the Jicarillas developed a combination of plains traits and sedentary traits of growing maize and making pottery which blended together to become typical of the Athapascan tribes.

9. The Jicarillas were, according to their creation legend, made up of two basic groups representing the merger of two peoples: the Olleros or mountain people of the Jicarillas and Carlanas who originally lived near or in the mountains, and the Llaneros or plains people or Cuartelejos and Palomas, and others who joined the Jicarillas.

This legend held that names of these two groups indicated the portion of the claimed area which each most commonly inhabited. Their language, culture and economy were the same. They were familiar with each other's terrain and commonly hunted and engaged in food gathering together. They also shared in ceremonial relay races held each year purportedly to determine whether the gathering or the hunting portion of the Jicarilla
colony would fare better in the year to come. They lent themselves to the economic mobility required of the Jicarilla Apache type of economy.

10. The Jicarilla acquired the art of making pottery at an early date under the influence of the now extinct Gallina culture as well as by Pueblo influence. Although it is impossible to determine the dates of use of the lands involved herein solely from Jicarilla pottery sherds which have been found in certain parts of the claimed area, these have been found at certain places, and together with other associated remains, indicate village and camp sites formerly used and occupied by these Indians; and these are in part in areas reported by the United States military and other officials as Jicarilla areas. (For example see Def. Exs. G-25, G-34 and G-62)

11. The Jicarillas adapted to use of the horse in about the seventeenth century. Their villages in the mountain valleys of northeastern New Mexico were within an accessible distance to the Great Plains area to the east thereof in northeastern New Mexico. They developed and carried out the arts of seasonal (fall and spring) buffalo hunting and plains warfare. They also hunted the deer, goat, sheep and other mountain animals of the Sangre de Cristo and Raton Mountains of northern New Mexico and southern Colorado. They also under Pueblo influence developed the art of agriculture. In addition they depended upon the gathering of berries, juniper and pinion nuts for food. These were found in the piedmont uplift to the east of the mountain ranges as they traveled to the eastern plains area.

Thus the Jicarillas were neither nomadic buffalo hunters wholly
of the plains culture, nor wholly hunters of mountain game, nor were they of a sedentary or agrarian culture wholly, but rather they were a combination of each in their annual pattern or cycle of economic life.

12. When the able-bodied members of the tribe went hunting for mountain game or east from their mountain valley homes for berry or nut gathering on the piedmont uplift and/or farther east on the plains for buffalo hunting, the grandparents stayed at an intermediate camp on or near the piedmont to care for the children. The women accompanied the men to dry and store the meat and hides and to assist in the gathering of berries and nuts.

13. For centuries the Jicarillas traded at the Pueblos of Taos and Picuries. They manufactured baskets and pottery. In addition to these items they traded hides and buffalo meat with the Pueblos. From Spanish times the Indians of New Mexico were victims of the liquor traffic. After United States occupancy, frequently the bulk of government issue to Jicarillas of supplies and rations were promptly exchanged with pernicious traders for liquor. The Federal Court held that New Mexico was not "Indian Territory" within the meaning of the Indian Intercourse Act. This Act prohibited sale of liquor in the "Indian Territory" within the jurisdiction of the United States.

14. The Jicarillas' first houses were flat-roofed adobe houses or rancherias, with their fields of maize in near proximity, as found and reported by the early Spanish. Jicarillas also utilized a type of hogan, the typical earthen house of the Navajo. Other types of habitation included the dome-shaped brush lodge covered with brush
and skins and their portable type of dwelling, the cone-shaped tepee covered with animal skins, usually buffalo, and anchored by heavy rocks. When the hunting camp moved on, a ring of these rocks marked the abandoned site of the camp of tepees. Although these, of themselves, are not conclusive of dates of use and occupancy, many of these abandoned sites have been found in their agricultural, hunting and gathering sites in northeastern New Mexico in areas which have been set out as Jicarilla areas on maps by U. S. military officers and other U. S. officials.

15. The Jicarillas developed a distinctive method of warfare and defense. They fought many battles against raiding attempts of neighboring Indian tribes and later to prevent the inroads of the Americans.

16. The Jicarilla Apaches had a social structure based upon a loosely knit band organization which was matrilineal. The typical Jicarilla Apache group consisted of a family in a direct line with unmarried sons and daughters in attendance, sons-in-law and married daughters living in separate families but remaining close enough to the family camp to maintain cohesion. This matrilineal nature of Jicarilla Apache camps is a marked Athapascan characteristic. Reliance upon the grandparents to raise the children is another characteristic of Jicarilla Apache organization. Children were instructed and actually raised by the grandparents, leaving the parents free to hunt and gather. The grandparents depended on the young boys to provide small game for them.

17. Dancing was a form of Apache diversion which also had a ceremonial significance. Their own voices and the beating of sticks upon a tight skin attached to a gourd provided the only music. The Jicarilla
Apache crafts included basket weaving as well as pottery making and these Indians collected feathers from birds for ornamental purposes and for use in arrow making. The concept of a Supreme Being is found in Jicarilla Apache religion but was not recognized as a punisher or rewarder. Although influenced to some extent by Catholicism, they were never converted to that religion.

In addition to fulfilling the necessities of Indian life, the area in northeastern New Mexico involved in this claim held a religious significance for the Jicarilla Apaches because their folklore revolved about specific places on the land. The tribe's creation legend located their territory as southeastern Colorado and northern New Mexico, a portion of which they continued to use and occupy prior to and following the advent of American sovereignty in this area.

18. Jicarilla Apaches retained the Athapascan trait of a fear of death. From this, as distinct from other Indians, such as the Comanche, they avoided the burial of members near their camp sites. Similarly, animal bones were always put at a distance from their villages.

19. The region of northeastern New Mexico varies from two to fourteen thousand feet in elevation. The higher elevations extend from Colorado into New Mexico and form the Sangre de Cristo Mountains. Various component ridges of the Sangre de Cristo include Culebra, Cimarron, Taos, Santa Fe, Mora, Las Vegas, Eaton, et al. This range of mountains parallels the Rio Grande River on the east. On the south it extends from below Santa Fe to the north by northeast in a
gentle arc to the Arkansas River in south-central Colorado. A considerable part of this region is covered by these mountains, flanked on either side by a high plateau or piedmont area. The Rio Grande River limits the plateau on the west to a width of ten to twenty miles. This piedmont is generally level but on the east flank of the mountains extends up to fifty or sixty miles and drops off in sharp escarpments toward the eastern border of New Mexico.

The plains area of this region is of a semi-arid character, usually not exceeding twenty inches, and sometimes not more than ten inches of annual rainfall. Heavy snows and low temperatures are frequently experienced, especially in the mountains during winter. Summer days are hot and dry with cool breezes at nights.

20. The Jicarilla total population in 1848 was approximately 1750 Indians. There was a considerable decimation of the Jicarillas by starvation, disease, and by campaigns of the United States Army in the early 1850's. The 1848 population of the Jicarilla Apache Indians was substantially diminished by three or four hundred Indians in about the first eight years of United States sovereignty in New Mexico (1848 through 1855) by malnutrition, exposure, alcohol, disease and gunshot. From 1855 to the 1880's the reduction continued in Jicarilla numbers. Although organized hostilities had ceased, other of the above mentioned factors continued until only about one thousand Jicarillas survived to take up permanent residence on their present reservation in 1887.

21. In 1541, after Cortez's conquest of Mexico City in 1519,
the Spaniard, Coronado, made his celebrated expedition northward, thence eastward from the Rio Grande where he encountered the Apaches. This expedition's chronicler, Castaneda, records the "Quercheros" who were later identified in 1599 by Juan de Oñate, the first colonizer of New Mexico, as the "Vaquero Apaches". In 1598 Oñate had assigned missionaries to the Apaches in the region to the north and east of the province of Taos which was located east of the Rio Grande River in present northern New Mexico. In 1598 Mendoza encountered Apaches whom they used as guides between the Pecos River and Tucumcari near the Canadian River in the southeast part of the claimed area.

In the earliest days these Apaches had close relations with the Pueblo Indians, particularly those of the Pecos, Picuris and Taos. In 1590 de Sosa reported the Vaquero Apaches as trading visitors to these Pueblos, and from whence their nation was reported as extending more than 100 leagues eastward in 1634 by Fray Benavides.

These Apaches were plainsmen and hunters. As late as the 17th century they used the typical pre-horse mode of transportation indigenous to the plains, the dog-drawn travoise. When they came to the Pueblos to trade they exchanged hunting products, meat, skins, fat, tallow and salt for the products of a sedentary culture, cotton blankets, pottery, maize, etc.

22. During the revolt of the Pueblos along the upper Rio Grande against Spanish authority in the year of 1680, a number of Pueblo Indians took refuge in company with Jicarillas upon the buffalo plains and became established for a number of years in the region of Cuartelejo in the area of present southwestern Kansas.
23. Vargas in 1694, and Ulibarri on July 21, 1706, encountered the Achos (of uncertain ethnology), together with the Rio Colorado and Conejero Apaches, east of Sangre de Cristo Mountains, returning from trading at Taos. The Ulibarri expedition found and reported the Cuartelejo Indians living in one farming community or "rancheria" after another to the area of present Scott County, Kansas.

24. The Pawnee and Jumanos Indians were stimulated by French fur traders to press these early Apache bands from the eastward Apache range. The Utes and Comanches threatened Apache bands from the north. Comanche forays in strength were made south of the Arkansas into the region of Taos, Ayroyo Hondo and Chochiti, all within the northeastern area of present New Mexico in the claimed area. Antonio de Valverde, governor and captain general, in 1719 led an expedition from Taos against Utes and Comanches. He found Jicarillas along the Cimarron, Purgatoire, and Arkansas rivers in northeast New Mexico and southeast Colorado. This was followed by Villasur's expedition beyond El Cuartelejo in the following year, 1720, who found Apaches as far east as Kansas and as far north as the Platte River.

25. In 1733 the Spanish established a mission among the Jicarilla Apaches ten miles north of Taos, New Mexico. The Apaches of this era devoted additional activity to agrarian pursuits as evidenced by the uniformity of references to their maize fields. Valverde, in 1719, found adobe Jicarilla houses surrounded by maize fields fifteen leagues from Taos, apparently in the vicinity of Cimarron Creek in present New Mexico, which he described in detail.
26. By the Treaty of Paris, 1763, Spain acquired the Louisiana Territory from France, and the Spanish renewed their efforts to organize the northern frontier of their empire. Nicholas de La Flora, an engineer on the expedition of the Marques de Rubi of 1768, constructed a map showing Apaches which had been found to be east of the Pueblo of Pecos into west Texas. Shortly thereafter the Escalante expedition of 1776 found and reported that the Utes were west of the Continental Divide.

27. For the greater part of the middle eighteenth century, beginning with the Bustamente's administration in the 1720's, the Spanish sought "the reduction of the Apache Indians of the valley of La Jicarilla to our holy faith", not merely to enhance the Spiritual kingdom but to maintain a buffer zone extending through the northeastern plains of New Mexico. Spanish concern was "the fiscal of his majesty and the auditor-general of war, with regard to their (Apache) inclination and concentration in Pueblos and their defense with arms in protection from the nation of the Comanche". While the Spanish occupied the Taos-Pecos area in present New Mexico for centuries, such Spanish occupancy was neither anterior to, nor an ejectment of, the Jicarillas' occupancy, but to the contrary, the Spanish conquerors sought to use the Jicarilla and other tribes of New Mexico over this long period of Spanish occupation. The Spanish policy was to integrate the Jicarillas, Utes, and Pueblo Indians into a strengthened frontier against Comanches, Pawnees, and the other tribes of Indians then situated north and east of present New Mexico who were subject to possible influence of foreign powers.
28. In 1786 Governor Anza stabilized the frontier by a treaty of peace with the Comanches. In 1794 Governor Concha reported the Jicarilla as far north as the 38th parallel in southeast Colorado. About the middle of the eighteenth century some of the Apache bands north of the Pecos had lost their separate identities, and became merged with the Jicarilla Apaches by reason of consistent pressures from the militant Comanches who preyed upon them for generations until Anza established the aforementioned peace. After the defeat of the Comanche by General Anza in the late 1700's their raids into northeast New Mexico were infrequent, brief and sporadic.

29. However, after Spain reconveyed Louisiana Territory to France (who shortly thereafter granted the Louisiana Purchase of 1803 to the United States), the Spanish had increased concern for the United States expansion into the southwest. The boundary of Louisiana Territory remained uncertain until the Adams-Onis Treaty of 1819. Frequent and extensive Spanish patrols went as far as 500 miles eastward along the Canadian River. Spain's difficulties at home, with Mexico, and with the United States increased, culminating in Mexican Independence in 1821. Interest in the affairs of Indians on the frontier, or at least reports of same, became almost non-existent after the turn of the 19th century and the almost vacuum of information about the Jicarilla and other Indians continued until the Mexican War of 1846 broke out, ostensibly over Mexico's failure to recognize (1) the 1845 annexation of Texas by the United States, and (2) that the new United States boundary (of Texas) extended to the Rio Grande.
30. The bands of Apache Indians which formed the Jicarilla Apache Tribe during the Spanish period of occupancy maintained homes in mountain areas along the east of the Rio Grande River in northeast present New Mexico where they practiced agriculture; and hunted to the south, north and to the east thereof on the edge of the buffalo plains, sometimes venturing northward to the Arkansas River and westward of the Rio Grande River.

31. From 1821 to August 1846 the claimed territory south of the Arkansas River was under the loose jurisdiction of the newly independent government of Mexico. The Mexican rulers of New Mexico did not keep informative records of Indian activities in the manner of their Spanish predecessors. The scant Mexican reports of this period made little mention of the Jicarilla in this relatively brief period of the sovereignty of Mexico in this region, 1821 to 1846.

32. By the close of the Spanish period in 1821, the Jicarillas joined the Utes in friendly hunts in the Sangre de Cristo Mountains of south-central Colorado and on the plains to the east thereof in Colorado.

The American explorers of the period prior to American sovereignty who explored to the headwaters of the Arkansas included Lieutenant Zebulon Pike in 1806; S. H. Long's expedition of 1819-1820; Jacob Fowler of 1821-1822; and Sibley in 1825. Lieutenant Abert encountered a band of Jicarilla Apaches on the Purgatoire River in 1845, but further identification of them at this time appears largely conjectural.

The Indians of this frontier were relatively unknown to the American explorers of this area and tribal distinctions among Indians of this
region often were confusing to the Anglos who were without benefit of Spanish intelligence on the subject.

The land for which no formal cession was ever made by petitioner and to which petitioner alleges aboriginal Indian title is presently situated in north-central and northeast New Mexico, south-central and southeast Colorado, and the Oklahoma Panhandle. (See boundaries outlined in red on Petitioner's Map, Ex. M) Most of this area was under Spanish sovereignty for nearly three centuries. Louisiana Territory was under the sovereignty of France prior to the Treaty of Paris of 1763 and was again conveyed to France by Spain just prior to the Louisiana Purchase of 1803.

The United States acquired sovereignty over the portion of the claimed area north of the Arkansas River by the Louisiana Purchase of 1803. The precise boundary line between the United States and Spain was established by the Adams-Onis Treaty of 1819, but while the latter treaty was being negotiated a revolutionary ferment arose culminating in the independence of Mexico with the signing of the Plan de Iguala on February 24, 1821. The Mexican War began in 1846 following the annexation of the Republic of Texas to the United States in the previous December. The United States acquired possession of that portion of the claimed area south of the Arkansas River by occupation of the United States Army of the west under command of Colonel Stephen Watts Kearny in 1846. The Mexican War officially ended with the signing of the 1848 Treaty of Guadalupe Hidalgo (9 Stat. 922). By its terms Mexico ceded to the United States all its right, title, and interest to those lands north
of the Article 5 boundary line, which area included New Mexico, California, and the lands in between.

By the Act of September 9, 1850, the New Mexico Territory was established and the United States finally compromised the optimistic but vexatious claims of the State of Texas to those lands lying west of its present boundary as far as the Rio Grande River. From all indications American sovereignty to that area south of the Arkansas River had formally attached with the ratification of the 1848 Mexican peace treaty.

The north boundary of the territory of New Mexico was defined as the thirty-eighth degree of north latitude west to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence along said parallel to the California boundary. However, on February 28, 1861, when the Territory of Colorado was established (12 Stat. 172) the northeast segment of theforesaid boundary line was redefined to uniformly follow the thirty-seventh parallel, thus reducing the area within the Territory of New Mexico.

33. The succession of political sovereignty over the claimed areas north and south of the Arkansas River has been traced in the preceding Finding 32. A brief resume of the United States administration of Jicarilla Indian Affairs in the claimed area will be treated here.

Charles Bent, co-founder of Bent's Fort on the Arkansas River in southeast present Colorado in 1833, was appointed Military Governor and ex-officio Superintendent of Indian Affairs over New Mexico Territory by General Kearney upon his conquest of the territory with the "U. S. Army of the West," in August, 1846, from Mexico.
Governor Bent, in the first official U. S. Report of Indians in New Mexico dated November 10, 1846, found that the Jicarillas hunted and roamed the plains of northeastern New Mexico, living also by theft from travelers occasioned by a growing scarcity of game.

Bent was killed by Indians and his successor in office, Colonel John M. Washington, arrived in Santa Fe on October 10, 1848. In December, 1848, Major B. L. Beall brought in chiefs and braves of the "Wutaws" and "Jicarillas" to Santa Fe where Governor Washington made an unratified "peace treaty" with them.

34. Depredations by "the wild Indians" and intermittent military expeditions against the Jicarillas continued with scant interruptions, but with sporadic intensity, through the administrations of military Governors Bent, Washington and Munroe in northern New Mexico, at Abiquiu, Taos Valley, Point of Rocks, Mora and Las Vegas, San Juan Mountains and Raton Mountains. Governor Washington's administration was hard pressed to cope with the problems of protecting the inhabitants of the territory, settlers, Pueblo Indians, and Mexican ranchers, et al, from raids by the Jicarillas, Utahs, Navajos, and plains Indians in northern New Mexico, both east and west of the Rio Grande River. Moreover, Governor Washington was also concerned with organizing a defense from any outside invasion of the new territory.

35. In July, 1849, the arrival of the first "Indian Agent of New Mexico Territory", James S. Calhoun, at the ancient Governor's Palace in Santa Fe marked the first although frail beginning of the United States' efforts to solve the problems of the Jicarilla through civil administration
rather than the established method of raw reduction and submission by military power. Calhoun, after conferring with Governor (Colonel) John Munroe, who succeeded Colonel John M. Washington, October 23, 1849, became convinced "the wild Indians had attempted to form a coalition of Navajos, Utahs, and Apaches (Jicarillas) to overrun and ravage the territory." On December 30, 1849, with the advice and assistance of Munroe, Agent Calhoun negotiated a treaty with the Utah chiefs at Abiquiu west of the Rio Grande River in New Mexico. This treaty conference had been requested by the Utah chiefs at Abiquiu "in their own country." (9 Stat. 984)

36. In the fall of 1849 Jicarillas slaughtered the party of J. M. White, who were Americans coming west along the Santa Fe Trail, near Point of Rocks in the northeast plains area of New Mexico. They took Mrs. White, her child, and servant as prisoners and ultimately killed them too. In the following year Congress appropriated a $1500 bounty for the redemption of the child of the J. M. White family.

The incident of the J. M. White party massacre became a cause celebre and numerous military expeditions were conducted against the Jicarillas in northeastern New Mexico in retaliation through the fall and winter of 1849. On May 20, 1850, the United States mail wagon dispatched from Las Vegas, New Mexico, enroute to Fort Leavenworth, Kansas, was destroyed and eleven men were killed by the Jicarillas. Lengthy and detailed accounts of the horror of this incident at Wagon Mound, 43 miles north of Las Vegas, again inflamed the frontier populace against the Jicarillas with resultant military action. Citizens of Taos
County petitioned Governor Munroe "to issue an order for a campaign of
the people of this county" against the Jicarillas living in the mountains
north of Taos as the appropriate measure to stop the alleged depredations
and menace of the Jicarillas living there.

37. The report of Superintendent of Indian Affairs, D. D. Mitchell,
of October 13, 1849, St. Louis, Missouri, stated that boundaries dividing
the different tribes had never been settled or defined. Mitchell urged
that government efforts be made to treat with the robber-tribes infesting
the mountains of New Mexico who were suffering from depletion of game
and buffalo and suggested such tribes of New Mexico could be settled on
agricultural lands and avoid a long protracted war by U. S. troops in
sterile and almost inaccessible mountains.

38. The efforts of General Choice and Colonel Charles May of
the U. S. Army to negotiate a treaty with the various tribes of Apache
Indians, in December, 1849, were made at Soccoro on the Rio Grande River well
over a hundred miles south of Santa Fe. These unfruitful negotiations
were with some Apaches, but not of the Jicarilla Tribe.

39. Thereafter, about twenty months passed before Congress, on
February 28, 1851, appropriated funds for four additional Indian agents
in New Mexico (9 Stat. 587). Agent Calhoun was appointed the first
Territorial Governor of New Mexico in March, 1851. Calhoun had exhausted
all available funds in the previous July in feeding Indian delegations
at Santa Fe. Meanwhile the Military Department continued to hunt down
"the enemy" (Jicarillas) in northeastern New Mexico, killing those who
could not flee the on slaughts.
40. The Rio Grande River was the dividing line between the Utes and the Jicarillas. In March, 1850, Calhoun officially reported it as such to Commissioner Brown. In the same year Bvt. Capt. Henry B. Judd, U. S. Army, submitted a map of his military reconnaissance in northeastern New Mexico to as far south as Bosque Grande (just south of the claimed area) which places the Jicarilla Apaches in the southern portion of their claim in the area from east of the Rio Grande River across the plains area and around the Canadian River area (Def. Ex. G-34). Governor Meriwether's map of 1856 also designates the Rio Grande River as the west boundary of the Jicarilla claim (Def. Ex. G-25).

41. The J. M. White, the mail wagon, and other depredations of Jicarillas, both real and imagined, sustained an almost frenetic excitement of territorial citizens against the Jicarillas that continued from 1849 to 1855. The 9th U. S. Military Department, commanded by Col. John Munroe, U.S.A., ordered scores of "scouts" and skirmishes against the Jicarilla throughout the year 1850 throughout the northeastern New Mexico area of the Jicarilla claim.

42. On April 2, 1851, Governor Calhoun and Colonel Munroe executed a peace treaty with Chacon, Lobo, Guero, and Josecito, who were respectively principal chief and subordinate captains of "the Apache Indians East of Rio Del Norte" (Jicarillas). They agreed their bands should keep the peace, trade only at designated trading points, not roam within fifty miles of any settlements or highways, and the U. S. government agreed it would grant donation, implements of husbandry and other gratuities to them as deemed prudent. The Jicarillas substantially
performed their agreement to keep the peace, but notwithstanding the appeal of Governor Galhoun, no funds to aid the starving Jicarillas were appropriated by Congress, nor was subject treaty confirmed.

43. A fatal malady overcame Governor James S. Calhoun and forced his retirement in April, 1852. Indian Agent John Greiner thereupon assumed the responsibilities of directing Indian affairs in New Mexico until the following September.

44. On July 1, 1852, Greiner and Colonel Sumner secured the signatures of certain principal Apache chiefs of "the Apache Nation" to a treaty of peace which was quite similar to the treaty Governor Calhoun had previously made April 2, 1851, "with the Apache Indians East of the Rio Del Norte" (Jicarillas). The latter treaty was signed, at least primarily if not exclusively, by Mescalero chiefs. It is the only treaty with any of the Apache Indians of New Mexico that was ever ratified by the U. S. Senate. (10 Stat. 979) In both the 1851 and the 1852 treaties the Indians agreed to desist from raiding and pledged their allegiance to the United States in exchange for promises of implements of husbandry and other gratuities as the government should deem prudent to grant. In the 1852 treaty the government declared its intention to affix Indian boundaries, which was never done.

45. Calhoun was succeeded by Territorial Governor William Carr Lane in September, 1852. Lane attempted to formalize by treaties the policy which was actually begun by Greiner to issue rations at regular intervals to the Apaches for five years. It was apparent to Greiner, Lane, M. Steck, Kit Carson, and other government agents that the Apaches must steal or starve in the absence of government assistance.
46. Governor Lane attempted to remove the Jicarillas to an area west of the Rio Grande River from their established hunting, roaming, and plunder areas of Taos, Mora, San Miguel and plains regions in northeastern New Mexico. The area chosen was in the region of the Chama River in northwest New Mexico where game was more plentiful. In the spring of 1853 Agent M. Steck had induced Chacon's band of 115 Jicarilla to settle on the Puerco, a tributary of the Chama River. The new settlement doubled in size by August 1853, with some acreage under cultivation.

47. However, the treaties negotiated by Lane to issue the Jicarillas' rations for five years and settle them west of the Rio Grande were not approved by George Manypenny, Commissioner of Indian Affairs. Their ration issues at Taos and Abiquiu were cut off. The Jicarillas resorted to theft of livestock of settlers in the region along the Rio Grande River to supplement their hunts to the east. This failure of Commissioner Manypenny to support Governor Lane's removal plans, coupled with a lack of appropriations by the Congress, forced Lane to abandon his plans for removal of all Jicarillas to the Chama River. Lane was succeeded by David Meriwether as territorial governor.

48. Jicarilla depredations, especially in San Miguel County and in the areas of the Mora and Canadian Rivers in New Mexico, resulted in hostilities with the U. S. military. In January 1854 Jicarilla Chief Lobo and four of his warriors were killed after an Indian raid on the Watrous Ranch in northeast New Mexico by troops under command of Colonel P. St. George Cooke stationed at Fort Union. The Jicarilla retaliated
by annihilating some 60 troops near Cienequilla, twenty-five miles southwest of Taos. Violence spread and on April 19, 1854, Agent Carson reported to Acting Superintendent Messervy that Chacon, principal chief of the Jicarillas, had returned to the Embuda Mountains stating that he had no choice but to fight or die with his tribe. In October 1854 Colonel Garland reported the Jicarillas were suing for peace upon any terms. The military expenditures had exceeded $100,000 to finance six volunteer companies under Colonel Garland's New Mexico command in 1854. (11 Stat. 204) These operations had extended from San Miguel County, New Mexico, along the Mora and Canadian rivers into the San Juan Mountains in Colorado, but on December 25, 1854, Utes and Jicarillas under Blanco and Huero, respectively, destroyed Pueblo, Colorado, killing fifteen men, abducting women and children, and stealing 200 head of livestock. The hostilities continued until August 1855 when the Jicarillas and Mohuache Utes sued for peace. Colonel Fauntleroy from Fort Union had proceeded northward, with more than a thousand men in the field, to Fort Massachusetts, Colorado, where he deployed them against the Jicarillas in the mountains.

49. In September 1855, Governor Meriwether negotiated separate treaties of peace with the Mohuache Band of the Utah Nation and Jicarilla Band of the Apache Nation. The Jicarilla treaty provided for a Jicarilla reservation on the Chama River and a plan to develop agriculture thereon with a system of annuities, extinguishment (cession to the United States) of Indian title to all Jicarilla lands described only as situated "within the Territory of New Mexico." The treaties were not ratified because of
the white settlers' clamor asserting claims to the reserved lands proposed. Government rations continued to be issued at Abiquiu and Taos agencies. Except for isolated instances of depredations, the Jicarillas never again took up arms against the United States.

50. On December 30, 1856, Governor Meriwether, in response to instructions of Commissioner of Indian Affairs George Manypenny, enclosed "the most correct map of New Mexico that I can procure, with the boundaries of the claims, reservations, etc., of the various tribes and where practicable, bands of Indians under charge of this Superintendency marked thereon, but with deep regret for the limited and imperfect information within my reach conducive to the object you have in contemplation." (See Map, Pet. Ex. B-6a and Def. Ex. G-25 for both letter and map)

In 1857 Col. B. L. E. Bonneville submitted a similar map. (Def. Ex. G-62) Both of these maps place the Jicarilla Apache in the northeast area of New Mexico from the mountains east of the Rio Grande River across the plains.

51. A period of peace followed the Jicarilla 1854-1855 struggles with the U. S. Army and lasted until 1860 under limited supervision of the Taos and Abiquiu agencies. In February 1859 Agent Kit Carson at Taos induced a number of Jicarillas to move from around Mora, New Mexico, to the west bank of the Rio Grande.

52. In 1861 Confederate forces occupied Santa Fe and the government removed the Taos Agency eastward from Abiquiu, New Mexico, over the mountains to Cimarron, New Mexico. The threat of settlers and of Texas
Confederate invaders was thereby lessened. The Mescaleros and Navajos engaged U. S. troops in the Civil War period while the Utes and Jicarillas remained loyal to the Union. In 1865 an unsuccessful attempt was made to remove the Jicarillas to Bosque Redondo south of the claimed area near the Mescaleros in New Mexico. In 1866 the Jicarillas were divided in their numbers; some drew rations west of the Río Grande at Abiquiu while 720 Jicarillas drew rations at Cimarron. In 1868 Bureau of Indian Affairs Agent, W. F. N. Amy, at Abiquiu, sought to obtain sanction of the United States government and of the Jicarillas that they be removed from the Taos area to Abiquiu, but despite agitations to remove Jicarillas from the Taos-Cimarron region to Abiquiu, a majority remained east of the Río Grande.

53. The sale of Maxwell's Land Grant in northeast New Mexico in 1870 considerably upset the Jicarillas in this area since the paternalism of Maxwell induced the Indians to think of themselves in the nature of lessors or at least as tenants in common with Maxwell. The situs of much of their folklore, sacred rites, and burial grounds were centered in the lands which Maxwell conveyed to strangers. For several years the Jicarillas were left in a state of uncertainty and concern as to their ultimate disposition following the sale of Maxwell's expansive ranch which had been a part of their home area for many years.

54. In 1874 an Executive Order set up a Jicarilla reservation at the headwaters of the San Juan River in Colorado near the Utes after an 1871 attempt to remove them to Fort Stanton had failed. The Jicarillas also refused to go upon this Colorado reserve and it was abolished by Executive Order of July 18, 1876. The planned removal began from the
discontinued Cimarron Agency in the summer of 1879 to Fort Stanton; but instead, most of the Jicarillas went westward and wound up at Abiquiu west of the Rio Grande. Government agents reported Jicarilla removals were more difficult than herding "wild turkeys." The few who reached Fort Stanton soon returned to the Cimarron area.

55. By Executive Order of September 21, 1880, a rectangular reserve of 480 square miles was set aside some sixteen miles west of the Tierra Amarilla Grant in northwest New Mexico. In August 1883 this reservation was restored to the public domain and the Jicarillas were transferred once again to Fort Stanton. The privations at Stanton were once again so great the Jicarillas escaped, some in the dead of winter, to San Ildefonso area twenty-five miles northwest of Santa Fe.

56. Finally, on February 1, 1887, the Jicarillas, by Executive Order, were restored to the reservation, which has since been to the present time, occupied by Jicarilla Apaches in Rio Arriba County, New Mexico.

57. On the occasion of their final removal to this reservation it was necessary for the military to round up remnants of the Jicarilla who were bound for their usual hunts on the plains of northeast New Mexico.

58. While the intensity of use of the plains area in northeast New Mexico gradually became less after United States sovereignty due to a diminished supply of game, the Jicarillas continued their traditional seasonal hunts thereon to the extent possible and necessary until their final reservation placement in 1887. It was necessary for them to cover great distances on these hunts in this semi-arid area.
59. During Spanish and Mexican sovereignty, large areas of land within the claimed boundaries were included within land grants made to individuals and communities by the Spanish and Mexican governments prior to United States sovereignty over New Mexico in 1848. Some of these land grants were confirmed by the Congress of the United States from 1858 to 1860, and others were determined by the United States Court of Private Land Claims. The facts determining the precise extent and location of those land grants relevant herein will be the subject of the next phase of this proceeding.

60. The Commission finds that (except for the lands in the Spanish and Mexican land grants to be determined in the next phase of these proceedings - see Finding No. 59 ante) there was an area largely in northeast New Mexico, with a small area in southeast Colorado to which the Jicarilla Apache Tribe held original Indian title, which area is described as follows:

Commencing with the present location of the town of McIntosh, New Mexico; thence north along the course of the Atchison, Topeka and Santa Fe railroad line as shown on the map of New Mexico (Pet. Ex. B-21) to the present site of Glorieta, N. M., shown on the same map; thence north to the crest of Santa Fe Baldy Mountain; thence northeasterly along the crest of the Sangre de Cristo range of mountains to the south bank of the Rio Chiquito river; thence east along the south bank of said river to the town Black Lake, N. M., thence north to the most easterly point of Eagle Nest Lake, in New Mexico; thence clockwise along said Lake to its most northerly point; thence westward in a straight line to the mouth of the Rio Hondo; thence in a northeasterly direction along the west bank of the Rio Grande river to its point of intersection with the present southern boundary of the State of Colorado; thence northeast to the present townsit of Trinidad, Colorado; thence southeast to the northeast corner of the State of New Mexico; thence south along the east boundary of the State of New Mexico to its intersection with 35° 30' of
North Latitude; thence west along 35° 30' of North Latitude to the intersection of 103° 30' West Longitude; thence south along 103° 30' West Longitude to its intersection with 34° 50' of North Latitude; thence West along 34° 50' North Latitude to the point of beginning.

61. In aboriginal times the Jicarilla Apaches had at best a meager existence. The plains area in northeast New Mexico was semi-arid and their use thereof was such that large areas were necessary even though this was a subsistence complementary use to their agriculture and later depredation thefts.

Upon the advent of the white settlement in their area, these Indians were gradually deprived of the use of certain hitherto used natural resources.

Thus by the gradual influx of white settlers and the appropriation of area for the use of the white man, the Indians were deprived of the use and occupancy of the lands which they had occupied from time immemorial.

The established pattern became the aforesaid resistance, depredation, robbing and pillaging by these Indians, accompanied by efforts of the white man to maintain peaceful relations through attempted treaties which were never confirmed, a system of rationing, and the moving of these Indians from one reservation to another until the final move in 1887.

From the evidence of record, the Commission finds that it is impossible to fix a single date of taking of the lands in question because by the conduct of the white settlers, together with actions taken by the United States military forces and other governing agents, these Indians, over a period of time were gradually deprived of their Indian title. Thus, without payment of compensation, the United States acquired, controlled,
and treated the lands of the Jicarilla Apaches as public lands. The
date of evaluation of the lands will be determined upon further proof
unless the parties herein may agree upon said date.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner