

BEFORE THE INDIAN CLAIMS COMMISSION

OTOE AND MISSOURIA TRIBE OF INDIANS,)
)
 Plaintiff,)

v.)

Docket No. 11-A

THE UNITED STATES OF AMERICA,)
)
 Defendant)

THE IOWA TRIBE OF THE IOWA RESERVATION)
 IN KANSAS AND NEBRASKA, THE IOWA TRIBE)
 OF THE IOWA RESERVATION IN OKLAHOMA,)
 et al., OMAHA TRIBE OF NEBRASKA, et al.,)
 THE SAC AND FOX TRIBE OF INDIANS OF)
 OKLAHOMA, THE SAC AND FOX TRIBE OF)
 MISSOURI, SAC AND FOX TRIBE OF THE)
 MISSISSIPPI IN IOWA, et al.,)

Petitioners,)

v.)

Docket No. 138

THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: April 14, 1964

Appearances:

Bert Barefoot, Jr., Attorney of
Record in Docket 11-A, and
I. S. Weissbrodt, Attorney of
Record in Docket 138, Attorneys
for Petitioners.

Ralph A. Barney with whom was
Mr. Assistant Attorney General
Ramsey Clark, Attorneys for
the Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

Docket No. 11-A is now before the Commission for consideration of the joint motion of the plaintiff, Otoe and Missouri Tribe, and the defendant, seeking approval of a proposed final settlement of plaintiff's claims and the entry of final judgment. Docket No. 138 is now before the Commission for consideration of the joint motion of the Omaha petitioners and the defendant, seeking approval of a proposed compromise settlement of the Omaha claims and the entry of final judgment on said Omaha claims.

Findings of fact on title and related issues of liability, earlier entered by the Commission, were made applicable to each of Docket Nos. 11-A and 138. (Findings of Fact Nos. 1 through 51, inclusive, issued July 31, 1957, as amended by Order entered November 29, 1957, and as further amended by Order entered November 25, 1959.) By these findings the Commission held that each of four tribes, the Otoe and Missouri Tribe, Omaha Tribe, the Iowa Tribe, and the Sac and Fox Tribe, had a one-fourth undivided interest in a certain area of land, being part of a tract of land known as Royce Tract 151 located east of the Missouri River in western Iowa and northwestern Missouri. The Commission further held that the interest of each the Otoe and Missouri Tribe and the Omaha Tribe in said area had passed to the United States on the same dates; and that the interest of each the Iowa Tribe and the Sac and Fox Tribe in said area had passed to the United States on other dates.

Pursuant to order of the Commission, trial was completed in May, 1961, on the value of the respective interest of each of the four tribes in the said area as of the dates each such interest passed to the United States. No findings of fact or briefs on such valuation issues have been filed by the parties with the Commission. Instead, as has been noted, a proposed final compromise settlement of the Otoe and Missouriia claims in Docket No. 11-A as approved by the tribe, the Bureau of Indian Affairs and the defendant, and a proposed final compromise settlement of the Omaha claims in Docket No. 138 as approved by the tribe, the Bureau of Indian Affairs and the defendant, have been filed with the Commission. With respect to the Iowa claims and the Sac and Fox claims in Docket No. 138, the Commission has been informed that the terms of proposed compromise settlements have been negotiated by the respective attorneys for the tribes and the defendant and are being submitted to the tribes and to the Bureau of Indian Affairs for consideration and action thereon.

The terms of the proposed compromise settlement of the claims of the Otoe and Missouriia Tribe in Docket No. 11-A and the terms of the proposed settlement of the claims of the Omaha Tribe in Docket No. 138, now before the Commission, are virtually identical and a joint hearing was held before the Commission on March 13, 1964, on the approval of each of said proposed settlements.

Attached as Exhibit "A" to the joint motion of the parties in Docket No. 11-A is a Stipulation for Entry of Final Judgment which

incorporates the terms of the compromise settlement of the Otoe and Missouri claims. The Stipulation provides for the entry in Docket No. 11-A, after all allowable deductions, credits and offsets, of a final judgment in favor of the Otoe and Missouri Tribe in the net amount of \$1,750,000. However, it is further provided in the Stipulation that the amount of \$150,000 of the \$1,750,000 final judgment, together with any interest which may accrue on said \$150,000, shall not be subject to disbursement from the Treasury of the United States pending the final determination (including any appeal or review as provided by law) of a conflicting claim of the Yankton Sioux Tribe, petitioner in Docket No. 332-A, as compensation for a portion of the area of land awarded to the tribes in Docket Nos. 11-A and 138; and that in the event that it shall finally be determined (including any appeal or review as provided by law) in favor of said Yankton Sioux in Docket No. 332-A that compensation is payable for part of the land within the area awarded to the tribes in Docket Nos. 11-A and 138, then said amount of \$150,000 withheld from disbursement, together with interest accrued thereon during the time said amount was on deposit in the Treasury of the United States, shall be returned to the credit of the United States. The Stipulation for Entry of Final Judgment which incorporates the terms of the proposed settlement of the Omaha claims in Docket No. 138 similarly provides for a net judgment in the amount of \$1,750,000 in favor of the Omaha Tribe of Nebraska, and also contains an identical provision for the withholding of \$150,000 of the \$1,750,000 from disbursement pending the final determination of the conflicting claim of the Yankton Sioux Tribe to a

portion of the area awarded to the tribes in Docket Nos. 11-A and 138.

The facts and circumstances in connection with said conflicting claim of the Yankton Sioux Tribe, petitioner in Docket No. 332-A, are described in the Commission's per curium opinion dated November 18, 1959 (13 Ind. Cl. Comm. 25). The northern boundary of the area which the Commission awarded to the four tribes in Docket Nos. 11-A and 138 was set out in Article 2 of the Treaty of August 19, 1825 (7 Stat. 272), and has been called the "Article 2 line." The Yankton Sioux, claiming the right to recover compensation for the area directly north of said Article 2 line, sought to intervene in Docket Nos. 11-A and 138 for the purpose of seeking to establish that the Commission's location of said Article 2 line was incorrect, and that the correct line was somewhat south of the Commission's location. The Commission by its order of September 8, 1959, allowed the Yankton Sioux Tribe to intervene in the consolidated cases, Docket Nos. 11-A and 138, for the limited purpose of having the Commission determine the precise location of the Article 2 line. After oral argument and filing of briefs, the Commission rejected the contentions of the Yankton Sioux (Opinion, 13 Ind. Cl. Comm. 25; Order entered November 25, 1959). However, to protect the United States against double liability in the event the Yankton Sioux Tribe took an appeal from the Commission's ruling and was successful on such appeal in establishing a right of recovery to a part of the area awarded in Docket Nos. 11-A and 138, the terms of the compromise settlements, as noted, provide for the withholding from disbursement of \$150,000 out of the award of each the Otoe and Missouri Tribe and the Omaha Tribe of Nebraska pending

the final determination of said conflicting claim of the Yankton Sioux.

The evidence shows that the compromise settlement of the Otoe and Missouri claims in Docket No. 11-A and the compromise settlement of the Omaha claims in Docket No. 138 are justified as a matter of fairness and equity to the tribes and to the defendant. The evidence further shows that the members and officials of each of the tribes were fully advised in the matter and gave their approval to the settlement in meetings appropriately convened and conducted. All formal requirements of the Commission with respect to proof of a valid approval of a compromise settlement have been substantially complied with by the parties.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner