

BEFORE THE INDIAN CLAIMS COMMISSION

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 Nos. 138 and 339

THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: March 22, 1965

FINDINGS OF FACT IN THE MATTER OF THE COMPROMISE
 SETTLEMENT OF DOCKET NOS 138 AND 339

1. On July 31, 1957, the Commission entered its Findings of Fact, Opinion and Interlocutory Order in Docket 138. On November 29, 1957, the Commission entered its Order amending its Findings Nos. 49 and 50 and its Interlocutory Order issued July 31, 1957. On November 25, 1959, the Commission entered its Order amending Finding No. 2. (See also Commission's per curiam opinion dated November 18, 1959, 13 Ind. Cl. Comm. 25). By these Findings, as amended, Orders and Opinions, the Commission held that by virtue of the Treaty of August 19, 1825 (7 Stat. 272) and the Treaty of July 15, 1830 (7 Stat. 328), four tribes, namely the Otoe and Missouri Tribe, the Omaha Tribe, the Iowa Nation, and the Sac and Fox Tribe received in common a certain area (being the greater

part of a tract known as Royce Cession 151) located east of the Missouri River in what is now western Iowa and northwestern Missouri, and that each of the four tribes had an undivided one-fourth interest in such area. (Finding No. 2 issued July 31, 1957, as amended by Order entered November 25, 1959, and Finding No. 50 issued July 31, 1957, as amended by Order entered November 29, 1957.)

2. By subparagraph (4) of its Finding No. 49 issued July 31, 1957, as amended by Order entered November 29, 1957, the Commission found that the interest of the Iowa Nation in that part of Cession 151 in northwestern Missouri passed to the United States on September 17, 1836 under the Treaty of September 17, 1836 (7 Stat. 511). With respect to that part of Cession 151 in western Iowa, the Commission found that the interest of the Iowa Nation passed to the United States on February 16, 1838, the date of the ratification of the Treaty of November 23, 1837 (7 Stat. 547).

3. In May, 1961, a consolidated trial was held in Dockets 11-A and 138 with respect to the value of the interest of each of the four tribes in Cession 151 at the relevant cession dates.

4. The Iowa Nation and the defendant have filed a Stipulation for Entry of Final Judgment in Docket 138 (Iowa Exhibit S-1) executed by Brian Sullivan, attorney of record for the Kansas and Nebraska Iowa, Nicholas Conover English, attorney of record for the Oklahoma Iowa, and Ramsey Clark, Assistant Attorney General, and Ralph A. Barney, attorneys for defendant. Attached to the Stipulation is an approval executed by

Mr. Fulton W. Hodge who is an attorney associated with McCarter & English. The Stipulation reads as follows:

"STIPULATION FOR ENTRY OF FINAL
JUDGMENT -- IOWA TRIBES

"It is hereby stipulated between counsel for the Iowa Tribes of Oklahoma and of Kansas and Nebraska, and for the defendant, the United States of America, that the claim of the Iowa petitioners in the above-entitled Docket No. 138 shall be settled and finally disposed of by entry of final judgment as follows:

- "1. There shall be entered in said Docket No. 138 a final net judgment in favor of the Iowa Tribes of Oklahoma and of Kansas and Nebraska, collectively, in the amount of \$1,372,267.50.
- "2. It is further agreed that the amount of \$150,000 of the \$1,372,267.50 net 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 the conflicting claim of the Yankton Sioux Tribe, petitioner in Docket No. 332-A, to compensation for land within the area (known as Royce Cession 151) lying south of the line described in Article 2 of the Treaty of August 19, 1825 (7 Stat. 272) as found by the Commission in its order entered herein on November 25, 1959. In the event that it shall be finally determined (including any appeal or review as provided by law) in favor of the said petitioner in said Docket No. 332-A that compensation is payable for land lying south of the Article 2 line as found by the Commission as aforesaid in its order of November 25, 1959, then said amount of \$150,000 withheld from disbursement, together with accrued interest 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 and the situation shall be as if the final judgment herein was in the net amount of \$1,222,267.50 rather than \$1,372,267.50: PROVIDED, HOWEVER, that upon final determination in Docket 332-A (including any appeal or review

as provided by law) denying said conflicting claim of the said petitioner in Docket No. 332-A, said amount of \$150,000, together with the accrued interest, shall be available for disbursement.

"3. Entry of final judgment on this basis shall finally dispose of all rights, claims or demands which said Iowa Tribes of Oklahoma and of Kansas and Nebraska have asserted or could have asserted, with respect to the subject matter of this case, and said petitioners shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action or actions.

"4. Entry of final judgment as herein provided shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted, or could have asserted, against said Iowa Tribes under the provisions of Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, and the defendant shall be barred, except as hereinafter provided from asserting any such rights, claims, demands, payment on the claim, counterclaims or offsets against the Iowa Tribes for the period August 4, 1824 to June 30, 1956, except as to the following item:

"(a) Offsets in the amount of \$45,000 as provided in the stipulation filed with the Commission in Docket No. 135.

"It is further agreed that the United States shall not be barred by this stipulation or by entry of judgment pursuant hereto from claiming, in any action which may be instituted hereafter, offsets not previously disposed of, arising prior to August 4, 1824 or accruing subsequent to June 30, 1956.

"5. It is further agreed that as part of the consideration for the settlement of the claims of the Iowa Tribe as herein provided, Docket No. 339 entitled, Iowa Tribe v. United States, shall be dismissed with prejudice by the Indian Claims Commission.

- "6. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination of the claims of the above-named petitioners in this case and shall become final on the day it is entered, the parties to the stipulation waiving any right to appeal from, or otherwise seek review of, such determination.
- "7. The final judgment entered pursuant to the stipulation of settlement shall be by way of compromise and settlement and shall not be construed as an admission for purpose of precedent or argument in this or in any other case.
- "8. Counsel for the parties hereto shall execute and file with the Commission a joint motion for entry of said final judgment pursuant to the stipulation of settlement, submitting a proposed form of final judgment for approval by the Commission."

5. On January 25, 1965, a hearing was held by the Commission on the proposed settlement in Docket 138 and the dismissal with prejudice of Docket 339. The following exhibits were received in evidence:

<u>Iowa Exhibit</u>	<u>Description</u>
S-1	Stipulation for Entry Of Final Judgment
S-2	Letter of November 12, 1963, from Department of Justice to Iowa counsel proposing settlement terms
S-3	Letter of December 12, 1963, from Louis L. Rochmes, who is associated with Iowa counsel, to Department of Justice relating to amount of consideration paid at the time of cession
S-4	Letter of December 30, 1963, to Iowa counsel from Department of Justice approving settlement terms
S-5	Letter of January 4, 1965, from Anadarko Area Office of the Bureau of Indian Affairs with respect to approval of contract of Dykema, Wheat, Spencer, Goodnow & Trigg with the Kansas and Nebraska Iowa

Iowa ExhibitDescription

- S-6 Letter of January 7, 1965, from the Anadarko Area Office to the Bureau of Indian Affairs approving the association of Louis L. Rochmes with Dykema, Wheat, Spencer, Goodnow & Trigg in prosecution of the claims of the Kansas and Nebraska Iowa
- S-7 Letter of January 11, 1965, to Louis L. Rochmes from the Bureau of Indian Affairs approving proposed settlement in Docket 138 and dismissal of Docket 339
- S-8 Notice of April 6, 1964, of Special Meeting of Kansas and Nebraska Iowa to be held on April 25, 1964, with Certificate of Mailing signed by Buford Morrison, Area Field Representative, Bureau of Indian Affairs
- S-9 Letter of April 7, 1964, from Dykema, Wheat, Spencer, Goodnow & Trigg to all members of the Kansas and Nebraska Iowa discussing the proposed settlement
- S-10 Letter of April 13, 1964, from Dykema, Wheat, Spencer, Goodnow & Trigg to the Executive Committee of the Kansas and Nebraska Iowa discussing the proposed settlement
- S-11 Resolution approving settlement in Docket 138 and dismissal in Docket 339 adopted by Executive Committee of Kansas and Nebraska Iowa on April 25, 1964, with Certificate of Marvin Campbell, Secretary of Executive Committee
- S-12 Resolution approving settlement in Docket 138 and dismissal of Docket 339 adopted on April 25, 1964, by the General Tribal Council of the Kansas and Nebraska Iowa with Certificates of the Secretary of the General Council and of the Area Field Representative, Bureau of Indian Affairs
- S-13 Minutes of meeting of the General Tribal Council of the Kansas and Nebraska Iowa held on April 25, 1964, with Certificates of the Chairman and Secretary of the General Tribal Council and of the Area Field Representative, Bureau of Indian Affairs

<u>Iowa Exhibit</u>	<u>Description</u>
S-14	Consent to settlement by individual petitioners of Kansas and Nebraska Iowa
S-15	Consent to settlement by Claims Committee of Kansas and Nebraska Iowa
S-16	Not relevant to settlement in Docket 138
S-17	Not relevant to settlement in Docket 138
S-18	Report of March 26, 1962 from McCarter & English to the Iowa Tribe of Oklahoma discussing the proposed settlement
S-19	Report of April 22, 1964, from McCarter & English to the Oklahoma Iowa
S-20	Minutes of the meeting of the Business Committee of the Oklahoma Iowa held on May 2, 1964, with Certificates of Secretary of the Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency
S-21	Resolution adopted by the Business Committee of the Oklahoma Iowa on May 2, 1964, with Certificates of the Secretary of the Tribal Council Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency
S-22	Certificate of Chairman of Oklahoma Iowa relating to notice of meeting of General Council of the Oklahoma Iowa on April 4, 1964, and adjourned meeting on May 2, 1964
S-23	Minutes of meeting of Tribal Council of the Oklahoma Iowa held on May 2, 1964, with Certificates of the Secretary of the Tribal Council Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency
S-24	Resolution of the Tribal Council of the Oklahoma Iowa adopted on May 2, 1964, with Certificates of the Secretary of the Tribal Council Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency

Iowa ExhibitDescription

S-25 Letter of July 31, 1964, to McCarter & English from the Area Director of the Anadarko Area Office of the Bureau of Indian Affairs, approving the association of Louis L. Rochmes with McCarter & English in prosecution of the claims of the Oklahoma Iowa

6. Iowa Exhibit S-7 is a letter of January 11, 1965, from the Bureau of Indian Affairs approving the proposed settlement in Docket 138 which, after reciting the review and study made by the Bureau of Indian Affairs, concludes as follows:

"In the light of the information which you have supplied us, that submitted by our field offices, and that which has been obtained from other sources, we believe that the proposed settlement of the value of the Iowa's interest in Royce Cession 151 at \$1,500,000; the withholding therefrom of \$150,000 pending the outcome of the adverse claims of the Yankton Sioux in Docket 332-A; that the consideration paid for Cession 151 was \$127,732.50; that Docket 339 be dismissed; and that offsets accruing between August 4, 1824 and June 30, 1957, against the Iowas is stipulated at \$45,000 in Docket 135, are fair and just to the Indians. The proposed settlements are hereby approved pursuant to the authority granted by Sec. 11, Secretarial Order 2508 (27 F.R. 11560)."

FINDINGS AS TO KANSAS AND NEBRASKA IOWA

7. The record shows that Dykema, Wheat, Spencer, Goodnow & Trigg, attorneys for the Kansas and Nebraska Iowa, prepared an eight-page letter dated April 7, 1964, to all members of the Kansas and Nebraska Iowa (Iowa Exhibit S-9) which was mailed by the Horton Agency office, Bureau of Indian Affairs to all members of the Tribe (Tr. 29). The Dykema firm also prepared for each member of the Executive Committee of the Kansas and Nebraska Iowa a 23-page letter analyzing the proposed settlement (Iowa Exhibit S-10). Iowa Exhibit S-9 is a summary of the more

detailed analysis contained in Iowa Exhibit S-10 and recited that Iowa Exhibit S-10 would be made available to any member of the Tribe who wished a copy. Both letters summarized all matters which were considered at the meeting of the General Tribal Council of the Kansas and Nebraska Iowa held on April 25, 1964, and, after analysis of the advantages and disadvantages of the proposed settlement, each letter contained the recommendation of the Dykema firm that the settlement is fair and in the best interests of the Kansas and Nebraska Iowa and should be approved.

8. The proposed settlement in Docket 138, including the dismissal of Docket 339, was first considered by the Executive Committee of the Iowa Tribe at a meeting held on April 25, 1964, immediately prior to the meeting of the General Tribal Council. After discussion by the attorneys for the Kansas and Nebraska Iowa, the members of the Executive Committee present at the meeting unanimously recommended acceptance of the proposed settlement (Tr. 37). The Executive Committee is composed of the officers of the General Tribal Council and all members are capable of reading and writing the English language (Tr. 37).

9. A meeting of the General Tribal Council of the Kansas and Nebraska Iowa was held at 1:00 p.m. on April 25, 1964, at the Iowa Community Building, Iowa Reservation, White Cloud, Kansas, the place where meetings are customarily held (Tr. 40). The meeting began at 1:00 p.m. and adjourned at 5:15 p.m. Notice of the meeting had been mailed on April 6, 1964, by Buford Morrison, Area Field Representative, Horton Agency, Bureau of Indian Affairs to all members of the Kansas and

Nebraska Iowa (Iowa Exhibit S-8). Out of the approximately 450 eligible voters (Tr. 28), approximately 119 members attended the meeting (Tr. 41). Normally 50 to 75 members attend a regular meeting (Tr. 41). The By-laws of the Kansas and Nebraska Iowa require the presence of 30 members for a quorum (Tr. 41). In the opinion of the Chairman of the General Tribal Council, the members present at the meeting were representative of the membership of the Tribe as a whole (Tr. 41). He testified that the decisions reached by those in attendance at the meeting would reasonably reflect the views of the entire membership (Tr. 42). At the meeting, attorneys for the Kansas and Nebraska Iowa discussed a proposed settlement in Docket 138, including the dismissal of Docket 339. The certificate of Buford Morrison, Area Field Representative, Horton Agency, Bureau of Indian Affairs, attached to the minutes of the meeting (Iowa Exhibit S-13) states that all action taken by those present at the meeting appeared to be voluntary and to be taken after a careful and full explanation of all proposals presented to the meeting and after adequate opportunity for all present to ask questions and to discuss all of the proposals. The minutes of the General Tribal Council meeting (Iowa Exhibit S-13), which the Chairman testified were a correct report of the proceedings (Tr. 66), show that the tribal attorneys summarized the proposed settlement in Docket 138 at the meeting and reviewed the principal considerations which prompted their firm to recommend acceptance of the proposal. The proposed settlement was then discussed and, after a resolution setting forth the proposed

settlement terms in detail was read to the meeting and after discussion, a vote was taken by a show of hands. The proposed settlement was unanimously approved by a vote of 97 in favor and 0 opposed (Iowa Exhibits S-12 and S-13).

10. Two members of the Kansas and Nebraska Iowa - Marvin L. Franklin and Forrest Fee - appeared as witnesses at the hearing before the Commission on January 25, 1965. Their testimony confirms that there was a full presentation to the members of the Tribe of the proposed settlement, and that the members of the Tribe understood the proposed settlement and considered it to be fair and equitable to the Tribe. Their testimony also shows that the members of the Tribe understood the settlement would be a final determination of all claims of the Tribe in Docket 138.

11. Marvin L. Franklin testified that he is 48 years old and lives in Bartlesville, Oklahoma, where he is employed as an attorney by Phillips Petroleum Company. He is a member of the Kansas and Nebraska Iowa and has been a member of the General Tribal Council and the Executive Committee since 1961. He is Chairman of the General Tribal Council and the Executive Committee (Tr. 21-22). Mr. Franklin attended Northern Oklahoma Junior College, receiving a degree as Associate in Commerce, and he also has an LL.B degree from the Oklahoma City University. He is a member of the Oklahoma Bar Association and has been associated with Phillips Petroleum since 1947 (Tr. 22).

He testified that he was familiar with the claims filed by the Kansas and Nebraska Iowa and had read various petitions, findings of

fact, briefs and decisions of the Commission as well as status reports furnished by the Dykema firm to the General Tribal Council and the Executive Committee (Tr. 23). Mr. Franklin testified that at the meeting of the Executive Committee Brian Sullivan and Thomas L. Munson, tribal attorneys, described in detail the settlement proposal in Docket 138, including the requirement of dismissal of Docket 339, and pointed out the advantages and disadvantages of the proposed settlement. He also testified that the tribal attorneys explained in detail to the General Tribal Council why they recommended acceptance of the proposed settlement and pointed out the alternatives available to the Tribe if the settlement were not approved (Tr. 44). He testified that it was explained to the General Tribal Council that the proposed settlement was a final settlement of the claims of the Kansas and Nebraska Iowa in Docket 138 (Tr. 66). He testified that in his personal opinion the settlement in Docket 138 was a fair and equitable settlement (Tr. 67). He also said that he did not know of any opposition to the settlement on the part of any member of the Kansas and Nebraska Iowa (Tr. 67 - Tr. 78). Mr. Franklin also testified that he and Mr. Fee had been authorized by the Kansas and Nebraska Iowa to appear at the hearing before the Commission (Tr. 67).

12. Forrest Fee testified that he was 49 years old and that he lives in White Cloud, Kansas, where he is engaged in farming. He is at present Secretary of the Claims Committee of the Kansas and Nebraska Iowa and previously had been Chairman of the Executive Committee and Chairman of the General Tribal Council (Tr. 50). Mr. Fee testified

that he was familiar with the nature of the settlement in Docket 138 (Tr. 51). Based on his experience in attending meetings of the General Tribal Council of the Kansas and Nebraska Iowa for approximately 20 years, Mr. Fee testified that those in attendance at the General Tribal Council meeting on April 25, 1964, were representative of the membership as a whole and that the decisions reached by those in attendance reflect the decisions that would be reached by the Tribe as a whole (Tr. 54). He testified that at the General Tribal Council meeting there was a full discussion of the reasons for and the reasons against the proposed settlement and that an opportunity was given to the members present to ask questions and that questions were asked (Tr. 54 - 55). Mr. Fee testified that in his opinion the tribal members present at the meeting understood the nature of the settlement and realized that the settlement was a final determination of all claims which the Iowa Nation could assert against the United States in Docket 138 and in Docket 339 (Tr. 55 - 56). He said that he believed those present at the meeting were satisfied with the presentation and the opportunities given for discussion and that he did not know of any member of the Kansas and Nebraska Iowa who opposed the settlement in Docket 138 or the dismissal of claims in Docket 339 (Tr. 56). He testified that in his personal opinion the settlement in Docket 138, including the dismissal of Docket 339, was a fair settlement for the Kansas and Nebraska Iowa (Tr. 59). Mr. Fee identified Iowa Exhibit S-14 the Consent of the Individual Petitioners of the Kansas and Nebraska Iowa - to the proposed settlement - and Iowa Exhibit S-15 - the Consent of the Claims Committee.

