

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., THE SAC AND FOX TRIBE OF INDIANS)
 OF OKLAHOMA, THE SAC AND FOX TRIBE OF)
 MISSOURI, AND SAC AND FOX TRIBE OF)
 MISSISSIPPI IN IOWA, ET AL.,)

Petitioners,)

v.)

Docket No. 135)

THE UNITED STATES OF AMERICA,)

Defendant.)

ADDITIONAL FINDINGS OF FACT - OFFSETS

The Commission makes the following findings of fact which are supplemental to the Findings 1 through 72 previously entered herein.

73. On March 2, 1965, in Docket No. 138, The Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, et al., v. United States, 15 Ind. Cl. Comm. 42, the Commission approved a stipulation between the Sac and Fox petitioners and the defendant that had been filed on July 19, 1961, in Docket No. 83, wherein offsets applicable to all Sac and Fox dockets were settled for the sum of \$35,000.00. Said amount was duly credited to the defendant in the final judgment entered in Docket 138. Accordingly, there are no offset proceedings pending against the Sac and Fox petitioners in the instant docket, and therefore the interlocutory award of \$965,560.39 previously entered herein on August 29, 1963, will be made final.

74. On August 29, 1963, the Commission entered Additional Findings of Fact, Opinion and a Second Interlocutory Order in Docket 135, holding that the Iowa Nation was entitled to recover from the defendant

\$678,193.77, less offsets that the defendant may be entitled to under Section 2 of the Indian Claims Commission Act.

75. On February 5, 1964, the Iowa Nation and the defendant filed a stipulation in Docket 135 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 David M. Marshall, attorneys for Defendant. The Stipulation reads as follows:

"It is hereby stipulated and agreed between counsel for the Iowa petitioners named above and counsel for the defendant that the defendant's claimed gratuitous expenditures made on behalf of the said Iowa petitioners be compromised and settled on the following terms and conditions:

1. The compromise settlement is in the amount of \$45,000, which shall be credited to the defendant as offsets against the judgment entered in this docket in favor of the Iowa petitioners.

2. The settlement includes all gratuitous expenditures between August 4, 1824 and June 30, 1956, and compromises all claims for gratuities which might otherwise be asserted against the Iowa Tribe or Nation of Indians, the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, the Iowa Tribe of the Iowa Reservation in Oklahoma, or any one of them, in Dockets 79, 135, 138, 153, 158, 209, 231 and 339 before the Indian Claims Commission.

3. The settlement shall not bar the United States for claiming gratuitous expenditures previous to August 4, 1824 or subsequent to June 30, 1956, in any future litigation between the same parties.

4. The settlement is without prejudice to the right of any of the parties to appeal from any judgment of the Indian Claims Commission on any ground other than the allowance as offsets of gratuitous expenditures from August 4, 1824 through June 30, 1956.

5. The settlement is conditioned upon approval by the governing bodies of each of the two organized Iowa tribes, to be signified by appropriate resolutions. The defendant shall be furnished with copies of each such resolution, and of the approval thereof by the Secretary of the Interior or his authorized representative.

6. Any judgment on offsets entered by the Commission pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by any of the parties for purposes of precedent or argument in any future offset proceedings in any case."

76. On January 25, 1965, a hearing was held by the Commission on the proposed settlement of offsets. The following exhibits were received in evidence:

<u>Iowa Exhibit</u>	<u>Description</u>
S-- 5	Letter of January 4, 1965, from the 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
S - 6	Letter of January 7, 1965, from the Anadarko Area Office of 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 the proposed settlement of offsets
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 of offsets
- 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 of offsets
- S - 13 Minutes of the 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
- S - 14 Consent to settlement of offsets by individual petitioners of Kansas and Nebraska Iowa
- S - 15 Consent to settlement of offsets by Claims Committee of the Kansas and Nebraska Iowa
- S - 16 Resolution approving settlement of offsets adopted by Executive Committee of the Kansas and Nebraska Iowa on April 25, 1964, with Certificate of Marvin Campbell, Secretary of the Executive Committee
- S - 17 Resolution approving settlement of offsets adopted on April 25, 1964, by the General Tribal Council of the Kansas and Nebraska Iowa with Certificates of the Secretary of the General Tribal Council and of the Area Field Representative, Bureau of Indian Affairs.
- 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 the prosecution of the claims of the Oklahoma Iowa

- S - 26 Letter of October 22, 1963 from Dykema, Wheat, Spencer, Goodnow & Trigg and McCarter & English to the Department of Justice proposing settlement terms.
- S - 27 Minutes of the Meeting of the Business Committee of the Oklahoma Iowa held on November 23, 1963, with Certificates of the Secretary of the Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency
- S - 28 Resolution adopted by the Business Committee of the Oklahoma Iowa on November 23, 1963, with Certificates of the Secretary of the Business Committee and of Robert D. Grover, Area Field Representative, Shawnee Indian Agency
- S - 29 Certificate of October 31, 1964, signed by Solomon N. Kent, Chairman of the Oklahoma Iowa Tribal Council certified by the Secretary of the Tribal Council, relating to Notice of October 31, 1964 of Meeting
- S- 30 Notice of October 26, 1964, signed by Solomon N. Kent, Chairman of the Oklahoma Iowa Tribal Council, relating to Meeting of the Tribal Council of October 31, 1964
- S - 31 Minutes of Meeting of the Tribal Council of the Oklahoma Iowa held on October 31, 1964, with signatures of the Secretary of the Tribal Council and with the Certificate of Luther Wammack, Acting Area Field Representative, Shawnee Indian Agency
- S - 32 Resolution adopted by the Tribal Council of the Oklahoma Iowa on October 31, 1964, approving the proposed settlement of offsets, with Certificates of the Secretary of the Tribal Council and of Luther Wammack, Acting Area Field Representative, Shawnee Indian Agency

FINDINGS AS TO KANSAS AND NEBRASKA IOWA

77. 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 all matters to be considered at the April 25, 1964 meeting, including the proposed settlement of offsets (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. Each letter contained the recommendation of the Dykema firm that the proposed settlement of offsets should be approved. The Chairman of the General Tribal Council of the Kansas and Nebraska Iowa testified that Iowa Exhibits 9 and 10 adequately explained the proposed settlement of offsets (Tr. 73).

78. The proposed settlement of offsets 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 approved

the proposed settlement of offsets (Iowa Exhibit S - 16; Tr. 72). 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).

79. 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 the proposed settlement of offsets. 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 of offsets at the meeting and reviewed the principal considerations which prompted their firm to recommend acceptance of the proposal. 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 of offsets was approved by a vote of 98 in favor and 1 opposed (Iowa Exhibits S - 12 and S-17).

80. 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. Mr. Franklin testified that the proposed settlement of offsets was considered separately from the other matters brought before the meeting (Tr. 74).

81. 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 the tribal attorneys explained the proposed settlement in detail to the General Tribal Council at the April 25, 1964 meeting (Tr. 73). He testified that the tribal members present understood the nature and effect of the proposed settlement of offsets (Tr. 75). He testified that in his opinion the settlement was a fair and equitable settlement (Tr. 76). 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).

82. 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 the members of the Executive Committee and of the General Tribal Council

present at the April 25, 1964 meetings understood the nature of the settlement of offsets (Tr. 60). He also 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 in his opinion the settlement of offsets was a fair settlement for the Kansas and Nebraska Iowa (Tr. 61).

FINDINGS AS TO OKLAHOMA IOWA

83. It appears from the record that the Business Committee of the Iowa Tribe of Oklahoma first considered the proposed settlement of offsets on November 23, 1963, and the minutes of that meeting are in evidence (S - 27). The Chairman of the Business Committee testified that the minutes fairly and accurately reflect the discussion and action taken at that meeting. (Tr. 107) Nicholas Conover English, the tribal attorney, was present and explained the matter in detail. Mr. English submitted to the Committee a copy of the letter dated October 22, 1963, to Honorable Ramsey Clark, Assistant Attorney General of the United States, from McCarter & English, as attorneys for the Iowa Tribe of the Iowa Reservation in Oklahoma, and Dykema, Wheat, Spencer, Goodnow & Trigg, as attorneys of the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, which letter sets forth the terms of the proposed settlement. Following questions and discussion, the Committee voted to approve the proposed settlement of offsets (S - 27; S - 28).

84. On October 31, 1964, there was a meeting of the Tribal Council of the Iowa Tribe of Oklahoma to consider the matter of approval of the settlement of offsets (Tr. 109). Written notice of that meeting was sent to members of the tribe by the Chairman of the Tribal Council, and announcement was also broadcast over the radio. In addition, Business Committee members and others also notified various members of the tribe verbally (Tr. 109 - 110; S - 29; S - 30).

85. The minutes of the meeting of the Tribal Council on October 30, 1964, are in evidence (S-31). From the Minutes it appears that Mr. English, the tribal attorney, made a full presentation of the pros and cons of the proposed settlement of offsets, and that he read the full text of the letter dated October 22, 1963, which set forth the precise terms thereof. Following discussion, a resolution to approve the settlement of offsets was passed by a vote of 32 in favor and 1 against (Tr. 112).

86. Two members of the Iowa Tribe of Oklahoma appeared as witnesses for that tribe at the hearing before the Indian Claims Commission on January 25, 1965. They were Solomon N. Kent and Blaine Kent. The testimony of these witnesses confirms that there was a full presentation to the members of the tribe of the facts surrounding the proposed settlement of offsets, and that the members of the tribe understood the proposed settlement and considered it to be fair and equitable to the tribe.

87. Solomon N. Kent testified that he is a full-blooded Iowa Indian (Tr. 82), 67 years of age (Tr. 84). He has been Chairman of the Tribal Council since 1941, and has been traditional chief of the Iowa Tribe of Oklahoma since 1947 (Tr. 83). He was educated at the Haskell Institute

at Lawrence, Kansas, and at Bacone College, Muskogee, Oklahoma (Tr. 83 - 84). Thereafter, he was ordained as a gospel missionary by the Southern Baptist Home Mission Board of Atlanta, Georgia, and served as a missionary among the Indians until 1953, when illness intervened (Tr. 84). More recently he has been supporting himself as an interior and home decorator and painter in Oklahoma City (Tr. 84). He testified that Nicholas Conover English, the tribal attorney of record, has visited the tribe about a dozen times since 1952 in order to meet with the Tribal Council in Oklahoma and report the progress of their cases before the Indian Claims Commission (Tr. 86). Mr. Kent stated that the tribe, as a result of these meetings, has been given a background of understanding of the kinds of questions that were involved in the settlement (Tr. 86 - 87). He testified that at the Tribal Council meeting on October 31, 1964, the members of the tribe appeared to understand what they were voting on, that they asked questions, and their questions were answered (Tr. 114). He said that there was no pressure applied to the tribe to vote one way or another (Tr. 114 - 115). Other than the one person who voted against the approval of the settlement of offsets, he did not know of any other member of the tribe who was opposed to it (Tr. 115).

88. Blaine Kent testified that he is 72 years of age and a brother of Solomon Kent. He has been a member of the Business Committee for 26 years (Tr. 120). He has had a school education through eighth grade and has learned the trades of carpenter and farmer. He operates a farm of about 60 acres, of which he owns 40 acres, and he has been so engaged for about 36 years (Tr. 120 - 121). He testified that at the Business

Committee meeting on November 23, 1963, the tribal attorney explained what the settlement of offsets meant and how it was arrived at (Tr. 123). As far as the witness could tell, the other members of the Business Committee understood what the proposed settlement of offsets was all about, and voted freely to approve it (Tr. 123). He further testified that at the Tribal Council meeting on October 31, 1964, he had been present and that the members of the tribe appeared to understand the questions involved in connection with the proposed settlement of offsets, that they had an opportunity to ask questions, and that they voted freely (Tr. 124).

89. The two surviving individual petitioners, Solomon N. Kent and Blaine Kent, suing as representatives of all of the members of the Iowa Tribe of Oklahoma, testified at the hearing that they personally approved the proposed settlement of offsets (Tr. 115; 124). The third individual petitioner, Elwood Small, died in March 1964 (Tr. 115).

FINDINGS AS TO IOWA NATION

90. There is on file with the Commission a copy of the contract currently in force and effect between Dykema, Wheat, Spencer, Goodnow & Trigg and the Kansas and Nebraska Iowa and a copy of the contract between McCarter & English and the Oklahoma Iowa. Iowa Exhibit S - 6 is a letter from the Anadarko Area Office of the Bureau of Indian Affairs approving the association of Louis L. Rochmes with the Dykema firm, and Iowa Exhibit S - 25 is a letter from the Anadarko Area Office approving the association of Mr. Rochmes with McCarter & English. The contracts with the attorneys for the Kansas and Nebraska Iowa and the Oklahoma Iowa

have been duly approved by authorized officials on behalf of the Secretary of the Interior.

91. The proposed settlement of offsets was thoroughly and fairly presented and explained to the members and officials of the Kansas and Nebraska Iowa and the Oklahoma Iowa. The members of both tribes understood the settlement and voluntarily and freely approved it. The Commission finds that by letter of January 11, 1965, the Bureau of Indian Affairs approved the proposed settlement of offsets. (Iowa Ex. S-7) The proposed settlement of offsets is fair and just to the Iowa Nation and defendant and we therefore approve the stipulation on offsets between the attorneys for the Iowa petitioners and the defendant.

92. Pursuant to the stipulation the settlement in the amount of \$45,000.00 is hereby credited to the defendant as an offset against the judgment in favor of the Iowa Nation in Docket 135, and a final net judgment in favor of the Kansas and Nebraska Iowa and the Oklahoma Iowa collectively, will be entered in Docket 135 in the amount of \$633,193.77. The settlement of offsets includes all gratuitous expenditures between August 4, 1824 and June 30, 1956, and compromises all claims for gratuities which might otherwise be asserted against the Iowa Nation, the Oklahoma Iowa, the Kansas and Nebraska Iowa or any one of them, in Dockets 79, 135, 138, 153, 158, 209, 231, and 339 before the Commission, but such settlement shall not bar the United States from claiming gratuitous expenditures previous to August 4, 1824,

or subsequent to June 30, 1956, in any future litigation between the same parties.

/s/ Arthur V. Watkins
Chief Commissioner

/s/ Wm. M. Holt
Associate Commissioner

/s/ T. Harold Scott
Associate Commissioner