

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PUEBLO DE ACOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 266
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 17, 1970

ADDITIONAL FINDINGS OF FACT

The Commission entered an opinion, findings of fact and interlocutory order herein on March 31, 1967 (18 Ind. Cl. Comm. 154), holding that the defendant had extinguished plaintiff's title to the lands described in Finding of Fact No. 32, which are located in the central-western part of New Mexico, without payment of any compensation. Both the Laguna Tribe of Indians, Docket No. 227, and the Navajo Tribe of Indians, Docket No. 229, claimed aboriginal title to these lands and, because of these conflicting claims, the Commission granted the defendant's motion for consolidation of these claims for purposes of trial. On January 18, 1955, the Commission ordered that Docket No. 227 be consolidated with Docket No. 266 insofar as the claims in each overlap. Later on February 3, 1961, Docket Nos. 227 and 266 were consolidated with Docket No. 229 to the extent that the areas claimed in those dockets overlapped the area claimed in Docket No. 229. (18 Ind. Cl. Comm. 154, 155)

The Laguna overlap conflict was determined and resolved on May 11, 1959 (18 Ind. Cl. Comm. 154, 204), by memorandum agreement, approved by the Commission on March 31, 1967, and the Navajo conflict was determined by the Commission in an opinion and findings of fact on March 31, 1967. The Commission, at page 238 (18 Ind. Cl. Comm. 154), stated: "With this background in mind, we believe that the territory we have described in Finding No. 32 as having been exclusively used and occupied by the Pueblo of Acoma and to which they held Indian title, is reasonably accurate and reflects the correct interpretation of the evidence in this case."

The Commission directed the parties to proceed with the case for the purpose of determining the acreage actually taken by the defendant and the value of the land at the date of taking. The parties determined that 1,507,940 acres of land were appropriated for use by the defendant without payment of compensation. This figure was used to determine the value of land involved in the compromise settlement which is presently before the Commission for approval.

The Commission herewith makes the following findings of fact which are supplemental and additional to the Commission's findings of fact numbered 1 through 34 entered herein on March 31, 1967 (18 Ind. Cl. Comm. 154) and order amending findings of fact and opinion dated May 2, 1968 (19 Ind. Cl. Comm. 152).

35. Counsel for plaintiff and defendant entered into negotiations for the purpose of a compromise settlement and on March 19, 1970,

counsel for plaintiff sent the following letter to defendant:

"DAZZO, DAZZO AND ASHBY  
ATTORNEYS AT LAW  
615 SIMMS BUILDING  
POST OFFICE BOX 1430  
ALBUQUERQUE, NEW MEXICO 87103

March 19, 1970

"Mr. Bernard M. Newburg  
Indian Claims Section  
Land and Natural Resources Division  
Department of Justice  
Washington, D. C. 20530

Re: Pueblo of Acoma -vs-  
United States, No. 266.

"Dear Mr. Newburg:

"The Pueblo of Acoma, claimant in Docket Number 266, Indian Claims Commission through its attorneys, Sam Dazzo and Nicholas C. Dazzo, will accept the sum of \$6,107,157.00 in full settlement of their claim under said docketed numbered case (266) Pueblo de Acoma, Claimant, versus United States of America.

"This figure will include all claims in said petition, which consists of loss of water rights and irrigation, timber, mineral and lands. This also includes the elimination of the offsets claimed by the United States.

"Sincerely,

/s/ Sam Dazzo  
SAM DAZZO

/s/ Nicholas C. Dazzo  
NICHOLAS C. DAZZO

SD:smh  
NCD:"

36. On April 10, 1970, the Assistant Attorney General, on behalf of the defendant, accepted the settlement offer subject to certain conditions. The acceptance letter states:

"ASSISTANT ATTORNEY GENERAL  
LAND AND NATURAL RESOURCES  
DIVISION

"DEPARTMENT OF JUSTICE  
WASHINGTON

April 10, 1970

"SK  
RAB:BMN  
90-2-20-453

"AIRMAIL

"Nicholas C. Dazzo, Esquire  
615 Simms Building  
Post Office Box 1430  
Albuquerque, New Mexico 87103

"Dear Mr. Dazzo:

"The offer to settle all claims in Pueblo de Acoma v. United States, Docket No. 266, before the Indian Claims Commission, for the sum of \$6,107,157, including all offsets to which the United States might be entitled from July 1, 1901, as set forth in the General Accounting Office report of September 28, 1961, as outlined in your letters of March 3 and March 19, 1970, is accepted subject to the following conditions:

"1. That the proposed settlement be approved by appropriate resolution of the governing body of the Pueblo de Acoma;

"2. That the approval of the settlement, as well as the resolution of the Pueblo de Acoma, be secured from the Secretary of the Interior, or his authorized representative;

"3. That responsible officials and representative members of the Pueblo be present to testify in behalf of the Pueblo on the compromise settlement before the Indian Claims Commission.

"The Department of Justice will be happy to work out with you the terms of the stipulation and the appropriate motions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

In drawing the joint motion for entry of judgment please list the documents which will be introduced in support of the settlement, such as (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letters of approval of the settlement by the Department of the Interior, and (4) such other papers as will be offered in evidence at the hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

Very truly yours,

/s/ Shiro Kashiwa  
Shiro Kashiwa  
Assistant Attorney General"

37. In accordance with a resolution of the Tribal Council of the plaintiff, dated April 19, 1970, the Tribal Council approved said compromise and settlement and directed that notice be given to the adult members of the Acoma Tribe to vote on said settlement at a general meeting of adult voters of the Acoma Tribe on May 9, 1970. Notices were posted in conspicuous places on the Reservation and at the post office. Notices were published in the Grants Beacon newspaper and also in the Albuquerque Journal and Albuquerque Tribune, newspapers of general circulation in New Mexico. Notice of the meeting was given by radio stations KGGM and KOB in Albuquerque, New Mexico, and KMIN in Grants, New Mexico. The notice of the meeting of final settlement was made available to all members of the tribe and, in addition, one member of the tribe personally carried notices to members employed by the Santa Fe Railroad in Barstow, California.

In addition thereto, a complete summary of all of the proceedings was outlined by the attorneys for plaintiff and copies of the summary were distributed, together with the notice, to the adult members prior

to the meeting. At the meeting on May 9, 1970, additional copies of the summary were handed to each individual member present.

Most members of the Acoma Tribe live on the Acoma Reservation.

38. Beginning at 9:00 a.m. on Saturday, May 9, 1970, in the Community Building at Acomita, New Mexico, on the Acoma Reservation, a general meeting of the adult members of the Acoma Tribe was held for the purpose of considering and voting upon the proposed settlement in this matter. The meeting was attended by more than 280 adult members. Also present were both of the attorneys for the plaintiff, Sam Dazzo and Nicholas C. Dazzo, Robert W. Young, Area Tribal Operations Officer, Albuquerque, New Mexico, Richard Romero, Tribal Operations Office for the Southern Pueblos Agency, Albuquerque, New Mexico, and Robert Magirl for the United Pueblos Agency office. San Victorino, Governor of the Acoma Tribal Council, served as chairman of the meeting.

After opening remarks by Governor Sam Victorino and Joe C. Ray, Secretary of the Tribal Council and a member of the Acoma Land Claims Committee, Sam Dazzo, one of the attorneys, gave a detailed presentation on the scope and history of the Acoma claim, the length of time and effort necessary to prosecute the case to judgment, the possible results of continued litigation and the background, terms, consequences and merits of the proposed settlement. This was explained in English and in the Acoma Indian language and took all morning. The meeting was recessed for lunch and reconvened at 1:30 p.m. at which time the attorneys answered all questions of the Acoma members.

After there were no further questions, the matter was put to a vote and it was determined that 275 voted for approval of the settlement and 7 voted against. These figures were entered on the resolution which was then executed by the Chairman, the Lt. Governor, Head Councilman and Secretary and authenticated by Robert W. Young, Representative, BIA, U. S. Department of the Interior. The resolution adopted is as follows:

"R E S O L U T I O N

"At a duly called meeting of the adult members of the Pueblo de Acoma, held on the 9th day of May, 1970, the following Resolution was adopted:

"WHEREAS, the Acoma Tribe has been prosecuting a claim before the Indian Claims Commission entitled Pueblo de Acoma vs. United States, Docket No. 266, and

"WHEREAS, the Indian Claims Commission, on March 31, 1967, entered an Interlocutory Order in Docket No. 266 that the Pueblo de Acoma had proven title to the area of land set forth in the Pueblo de Acoma Petition covering 1,507,940.00 acres of land, and

"WHEREAS, a recapitulation of Acoma Pueblo trust lands reveals that 86,403.94 acres of minerals are not owned by the Pueblo de Acoma, and

"WHEREAS, the Commission ordered the case proceed to a determination of the value of said lands, and

"WHEREAS, the Acoma Land Committee, composed of Syme Sanchez, Joe Chino and Joe Ray, together with the Claims Attorneys, Nicholas C. Dazzo and Samuel L. Dazzo have proposed settlement of the value with the United States of America, and

"WHEREAS, the Acoma Land Committee, the Claims attorneys and the Department of Justice of the United States have entered into an offer to settle all claims in the case of the Pueblo de Acoma vs. United States, Docket No. 266, for the sum of \$6,107,157.00, and

"WHEREAS, the Council has fully debated and considered the proposed offer of settlement of the value of acreage taken, and

"WHEREAS, considerable time will be taken to finally hear and determine the question of value, and considerable expense will be incurred with a possibility of appeals or further delays could be had before a final judgment could be entered, and

"WHEREAS, the Tribal Council heretofore authorized the Claims Attorneys and the Pueblo Land Committee to negotiate a possible settlement of Docket No. 266 and that, as a result of their cooperation, successful negotiations for the settlement have occurred, subject to the approval of the Pueblo de Acoma, the Secretary of the Interior and the Indian Claims Commission to settle and compromise for the sum of \$6,107,157.00, which amount is net after having settled and compromised all offsets and claims the United States may have, and

"WHEREAS, the Pueblo de Acoma had a general meeting for the purpose of considering the terms of such settlement which was fully discussed by the attorneys, the Pueblo Land Committee and the adult members of the Acoma Pueblo through discussion and answers concerning all phases of the claim, and

"WHEREAS, a representative of the Department of the Interior, Bureau of Indian Affairs, was present during said meeting and observed the proceedings, and

"WHEREAS, the adult members of the Pueblo de Acoma are fully informed and advised regarding the proposed settlement, together with the proposed Stipulation for Entry of Final Judgment, a copy of which has been distributed to the members of the Pueblo de Acoma and read in open Tribal Meeting and explained by the attorneys,

"NOW, THEREFORE, BE IT RESOLVED by the adult members of the Pueblo de Acoma assembled, that the proposed final settlement of \$6,107,157.00 after all claims and offsets, in Docket No. 266, be and the same hereby is approved; it being understood that this approval authorized the attorneys to execute the proposed Stipulation for Entry of Final Judgment, and



"BE IT FURTHER RESOLVED that the Chairman and Secretary of this meeting are authorized to execute the proposed Stipulation and that the Chairman and the Land Committee are authorized to appear and testify before the Indian Claims Commission regarding the proposed settlement and the action taken by the adult members of the Pueblo de Acoma, and

"BE IT FURTHER RESOLVED that the Secretary of the Interior and the Indian Claims Commission are hereby requested to approve the proposed Settlement and Stipulation for Entry of Final Judgment.

/s/ Sam Victorino  
CHAIRMAN

ATTEST:

/s/ Frank L. Ortiz  
LIEUTENANT GOVERNOR

/s/ Joe C. Ray  
SECRETARY

/s/ Harry Ascencio  
HEAD COUNCILMAN

"C E R T I F I C A T I O N

"I hereby certify that, at a duly called meeting of the adult members of the Pueblo de Acoma, held on the 9th day of May, 1970, the foregoing Resolution was adopted by a vote of 275 for and 7 opposed.

"DATED: This 9th day of May, 1970.

ATTEST:

/s/ Sam Victorino  
CHAIRMAN

/s/ Joe C. Ray  
SECRETARY

"A U T H E N T I C A T I O N

"I hereby certify that Sam Victorino, Frank L. Ortiz, Harry Ascencio and Joe C. Ray, personally known to me, subscribed their names to the foregoing Resolution in my presence and that the foregoing Resolution was adopted by a vote of 275 for and 7 opposed.

"DATED this 9th day of May, 1970.

/s/ Robert W. Young  
Representative, Bureau of  
Indian Affairs  
U. S. Department of Interior"

39. Robert W. Young and Richard Romero attended the Tribal Meeting as representatives of the Area Director and the Southern United Pueblos Agency, Bureau of Indian Affairs and Robert W. Young reported to the Washington office of the Bureau concerning the meeting. On the basis of this report and other information available to the Bureau of Indian Affairs, the compromise settlement was approved in a letter to plaintiff's counsel, dated May 13, 1970, from William S. King, Acting Assistant Commissioner. The letter reads as follows:

"UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D. C. 20242

"Tribal Operations

"MAY 13, 1970

"Messrs. Sam Dazzo and Nicholas C. Dazzo  
Attorneys at Law  
615 Simms Building  
Post Office Box 1430  
Albuquerque, New Mexico 87103

"Gentlemen:

"You have requested our approval of the actions taken by the Pueblo de Acoma at a meeting held on May 9, 1970, accepting a proposal to settle the claims in Indian Claims Commission docket No. 266, and also our approval of the settlement.

"Claims contract No. I-1-ind. 42154, dated December 27, 1948, between Attorney Sam Dazzo and the Pueblo de Acoma, was approved on July 26, 1949, for a period of three years beginning with the date of approval. The Pueblo continued to retain your services under that contract by an agreement dated March 4, 1953, which was approved on May 27, 1953. The 1953 agreement was amended by an agreement dated April 27, 1956, which was approved on August 27, 1957. The amendment provided for an extension of the terms of the 1948 contract for a period of five years beginning on July 26, 1952. The Pueblo de Acoma then entered into contract No. 14-20-650-576, dated June 19, 1958, with Attorneys Sam Dazzo and Nicholas C. Dazzo which was approved on April 8, 1958, for a period of five years beginning on July 26, 1957. This contract has since been

extended for two periods of five years each, the last being approved on July 6, 1967, for a period of five years beginning on July 26, 1967.

"You made an offer to the Attorney General on March 3, 1970, to settle all claims in docket No. 266 for a net sum of \$6,107,157.00. Your offer was accepted on April 10, 1970, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate resolution of the governing body of the Pueblo de Acoma and that approval of the settlement, as well as the resolution, be secured from the Secretary of the Interior or his authorized representative.

"The proposed settlement provides for entry of a net judgment to the Pueblo de Acoma in the amount of \$6,107,157.00. Entry of final judgment shall finally dispose of all rights, claims or demands which the Pueblo has asserted or could have asserted with respect to the subject matter of the docket. It will also finally dispose of all rights, claims, demands, payment on the claim, counterclaims or offsets which could have been asserted under Section 2 of the Act of August 13, 1946 (60 Stat. 1049), for the period from July 1, 1901, through September 28, 1961. Both parties waive any and all rights to appeal from or otherwise seek review of such final judgment.

"You presented the terms of the proposed settlement to both the Pueblo Tribal Council and the General Council. The tribal council met on April 19, 1970, and adopted a resolution approving the proposed settlement subject to approval of the proposed settlement by the General Council. Accordingly, a meeting of the General Council was called for May 9, 1970.

"Notices stating the time and place and the purpose of the meeting were posted in public places in the various communities within the Acoma Reservation. Notices were sent a week or more in advance of the meeting to adult members who do not live in or near the reservation. Also, notices were placed in newspapers and announcements made over radio stations serving the areas in which the members of the Pueblo live. We are satisfied that the meeting was well publicized so that those members who desired to attend had an opportunity to arrange to do so.

"A representative of the Bureau of Indian Affairs attended the meeting as an observer and reported on it.

"The meeting was held in the Community Hall, Acomita, New Mexico, on May 9, 1970, as scheduled. A report prepared by the Pueblo's claims attorneys was given to those who attended the meeting if a copy had not previously been given to them.

The report identified the claims and explained in considerable detail the terms proposed for settlement of them.

"The great majority of members of the Pueblo live in or near the reservation. Somewhat less than half of the estimated two thousand members of the Pueblo de Acoma who live on or near the reservation are believed to be adults. The number attending the meeting was perhaps the largest for any General Council held for many years. All of those who came could not get inside the building and a loud speaker system was used for their benefit.

"The meeting opened about nine o'clock in the morning. After preliminaries, one of the claims attorneys gave a detailed explanation of the claims in docket No. 266 and the proposed settlement of them. Maps were used to show the land areas involved. In addition, the services of a capable interpreter were used for the benefit of those members who may not have a good understanding of the English language.

"The explanation by the attorney ended about noon when a recess was called during which period the Indians could have lunch and discuss the proposed settlement among themselves.

"The meeting reconvened about two o'clock and an extended question and answer period was had. The Indians asked many questions of the attorney which he answered. The Indians were then asked to vote to either accept or reject the proposed settlement. The proposed settlement was accepted by adoption of a resolution by a vote of 275 for and 7 against. The resolution was signed by the Governor of the Pueblo de Acoma and by a member of the Tribal Claims Committee. Their signatures were certified as genuine by the Bureau's Representative.

"We are satisfied that the meeting was well noticed, that it was very well attended, that the members appeared to understand the terms of the proposed settlement before voting on it, and that the views expressed by those voting reasonably expressed those of the membership of the Pueblo de Acoma. The resolutions adopted are hereby approved.

"In light of the information which you have submitted to us, that supplied by other government agencies and by our field offices, and that obtained from other sources, the proposed settlement of docket No. 266, as set out in the 'Stipulation for Entry of Final Judgment', is hereby approved.

"Sincerely yours,  
/s/ William S. King  
Acting Associate Commissioner"

40. Pursuant to the resolutions adopted by the Acoma Tribe, Governor Sam Victorino, Frank L. Ortiz, the Lt. Governor, Mariano Vicente, the Head Councilman and Joe C. Ray, Syme Sanchez and Joe A. Chino, Acoma Land Claims Committee and the attorneys for plaintiff executed a stipulation for entry of final judgment. After approval of the proposed settlement by the Secretary of the Interior, counsel for the defendant, in compliance with its conditional acceptance of the terms of the compromise offer, executed such stipulation and it was filed with the Commission on June 3, 1970. The stipulation reads as follows:

"BEFORE THE INDIAN CLAIMS COMMISSION

"PUEBLO DE ACOMA,

Petitioner,

vs.

Docket No. 266

THE UNITED STATES OF AMERICA,

Defendant.

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"The parties, by and through their respective counsel, hereby stipulate that the above-entitled claim shall be settled, compromised and finally disposed of by entry of final judgment, as follows:

"1. There shall be entered in the case, after all allowable deductions, credits and offsets, a net judgment for Petitioner in the amount of Six Million One Hundred Seven Thousand One Hundred Fifty-Seven Dollars (\$6,107,157.00).

"2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which the Petitioner

has asserted or could have asserted with respect to the subject matter of Docket No. 266, and Petitioner shall be barred thereby from asserting any such right, claim or demand against Defendant in any future action.

"3. Entry of final judgment in the aforesaid amount 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 the Petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c.949, 60 Stat. 1049) for the period from July 1, 1901, through September 28, 1961, and Defendant shall be barred thereby from asserting against Petitioner in any future action, any such rights, demands, payments on the claim, counterclaims or offsets attributable to such period. It is agreed that Defendant shall not be barred by this Stipulation or by entry of judgment pursuant thereto from claiming in any future action offsets accruing before July 1, 1901, and after September 28, 1961.

"4. The final judgment entered pursuant to this Stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument, in any other case.

"5. The final judgment of the Indian Claims Commission, pursuant to this Stipulation, shall constitute a final determination by the Commission of the above-captioned case, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

"6. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this Stipulation, submitting a proposed form of final order for the approval of the Commission.

"7. Attached to this Stipulation and incorporated herein by reference is a Resolution approving the settlement adopted by the Acoma Tribal Council, Petitioner's governing body, a Resolution adopted at a meeting of the adult members of the Acoma Tribe of Indians, held at Acomita, Pueblo de Acoma, New Mexico, on May 9, 1970, both authorizing counsel for Petitioner to enter into this Stipulation on the basis set forth herein,

and a copy of a letter approving the settlement of this litigation by the Secretary of the Interior or his authorized representative.

"DATED: This 16th day of May, 1970.

/s/ Shiro Kashiwa  
SHIRO KASHIWA  
Assistant Attorney General  
of the United States

/s/ Sam Dazzo  
SAM DAZZO  
Attorney of Record for  
Petitioner in Docket No. 266

/s/ Ralph A. Barney  
RALPH A. BARNEY  
Attorney for Defendant

/s/ Nicholas C. Dazzo  
NICHOLAS C. DAZZO  
Attorney of Record for  
Petitioner in Docket No. 266

"Approval of Petitioner, as follows:

"APPROVED:

/s/ Svme Sanchez  
ACOMA LAND COMMITTEE

/s/ Sam Victorino  
GOVERNOR, PUEBLO de ACOMA

/s/ Joe A. Chino  
ACOMA LAND COMMITTEE

/s/ Frank L. Ortiz  
LIEUTENANT GOVERNOR

/s/ Joe C. Ray  
ACOMA LAND COMMITTEE

/s/ Mariano Vicente  
HEAD COUNCILMAN

"ATTEST:

/s/ Joe C. Ray  
SECRETARY"

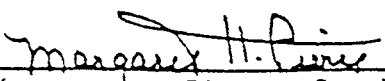
41. On June 9, 1970, the Commission held a hearing on the proposed settlement of Docket No. 266. After a full statement by counsel for plaintiff setting forth the background of the settlement and the identification of exhibits pertinent thereto, Governor Sam Victorino, Chairman of the meeting of May 9, 1970, took the stand. Governor Victorino testified, among other matters, that more members of the tribe attended the meeting held on May 9, 1970, than had ever

attended meetings in the past, that the terms of the proposed settlement were understood and fully approved by those present and that the vote taken at the meeting was a fair representation of the members of the Acoma Tribe.

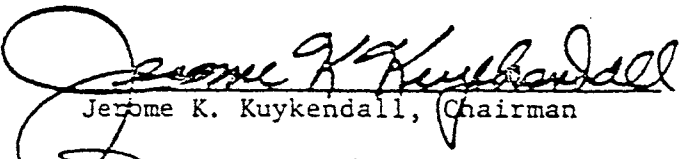
Joe C. Ray, Secretary of the Tribal Council and Chairman of the Land Claims Committee, testified as to the same matters.


42. Based on the entire record of these proceedings, including the prior findings and decisions of the Commission in Docket No. 266, the approval of the settlement by counsel for both parties, the Secretary of the Interior and the Acoma Tribe of Indians, by vote at a general meeting of the adult members of the Tribe and by resolution of the Acoma Tribal Council, the Commission finds that the proposed settlement of all Acoma claims asserted in Docket No. 266, is fair to both parties, that it has been fully and reasonably explained to the members of the Acoma Tribe and was understood and agreed to by them, and that approval of the settlement will eliminate the need for considerable additional litigation expenses as well as delay in payment of any final award. In addition thereto, all offsets claimed by the defendant are compromised and settled.

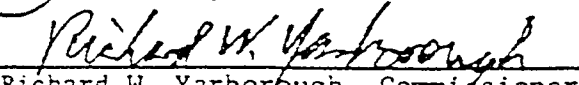
Hence, the joint motion for entry of final judgment will be granted.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner