

BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 332-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 8, 1972

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. Plaintiff, the Yankton Sioux Tribe, is an American Indian Tribe within the meaning of § 2 of the Indian Claims Commission Act, as amended, 25 U.S.C. § 70a (1970), with a tribal organization duly recognized by the Secretary of the Interior as having authority to represent such Tribe.
2. The claims in this case arise under § 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a (1970).
3. The petition in this case was filed before the Indian Claims Commission on August 10, 1951, by the Yankton Sioux Tribe. The petition demanded a general accounting for defendant's administration of plaintiff's tribal funds and properties which defendant had controlled and managed over the years.
4. The defendant filed its accounting report prepared by the General Services Administration on August 25, 1965.
5. A trial was set in this case before the Commission on June 22, 1972.

6. While preparing for trial, the parties also entered into extensive negotiations on possible settlement of the claims. As a result of these negotiations, agreement was reached on a settlement of the claims in the docket in the net amount of \$4,750,000.00. The parties were unable to agree on the inclusion of certain claims in the compromise settlement. These claims are set forth in the stipulation for entry of final judgment and are specifically reserved. They are:

(1) claims for an accounting from July 1, 1951, to date; and (2) claims arising under the Act of December 31, 1892, 28 Stat. 314. In addition, the stipulation specifically does not affect any issue (claims, counterclaims, and defenses) involved in Docket No. 332-C now pending before the Indian Claims Commission, any issue in the claims now pending before the United States Court of Claims, and other claims which may be brought in the future before the United States Court of Claims on behalf of the plaintiff. In addition, the settlement herein does not involve any offsets which the defendant may have or be able to assert against the plaintiff. Such offsets, if any, are preserved and may be asserted by the defendant in the remaining claims the petitioner has.

7. By letter dated June 8, 1972, plaintiff submitted a proposal offering to compromise and settle the claims in Docket No. 332-B to the Acting Attorney General, Richard Kleindienst. The letter states:

Dear Mr. Attorney General:

Following preliminary discussions we have had with Ralph A. Barney, Esq. and Marvin E. Schneck, Esq., members of your staff, concerning the possible

settlement of the above-referenced case, we offer to compromise and settle the litigation on the following terms and conditions:

(1) The case shall be compromised and settled by stipulation for entry of final judgment in the Indian Claims Commission, no review to be sought or appeal to be taken by either party.

(2) The amount of the judgment against the defendant shall be \$4,750,000.00. Final judgment shall be awarded to the Yankton Sioux Tribe of Indians in that amount.

(3) The stipulation for entry of final judgment shall, with the exceptions discussed in paragraph 4, infra, finally dispose of all claims and demands which petitioner has asserted or could have asserted against defendant in this case.

(4) The petitioner expressly reserves the following claims which it may have or assert against the defendant and the claims and any judgment of liability thereon are not affected by the stipulation and entry of final judgment under this offer of settlement and compromise it being understood by the parties that these reservations do not waive any procedural or substantive defenses which either of the parties have to any claims or set-offs.

(a) any claims or demands which petitioner may have or assert against the United States for an accounting for the period commencing with July 1, 1951, it being understood that this paragraph shall not be construed to waive any procedural or substantive defenses the United States may have to this claim including the lack of jurisdiction of the Indian Claims Commission to entertain claims accruing subsequent to August 13, 1946.

(b) any claims which petitioner may have or assert against the United States arising from the sale of petitioner's reservation lands pursuant to the Agreement of December 31, 1892, 28 Stat. 314, it being understood that this reservation shall not be construed to waive the right of the United States to raise any procedural or substantive defenses to this claim, including the lack of jurisdiction of the Indian Claims Commission to entertain claims for property other than money in an accounting case.

(c) all issues (value, consideration and offsets) now pending in the case of Yankton Sioux Tribe v. United States, Docket No. 332-C, before the Indian Claims Commission arising from the Treaty of April 19, 1858, 11 Stat. 743;

(d) any claim now pending or which may be brought before the United States Court of Claims on behalf of the Yankton Sioux Tribe arising from any statute, transaction or event accruing after August 13, 1946, it being understood that such reservation shall not be construed to waive the right of the United States to raise in the Court of Claims any procedural or substantive defenses to any such claim or claims, including the Statute of Limitations.

(5) It is understood that in agreeing to the settlement of the claim in Docket No. 332-B, offsets and counterclaims have not been considered by the parties, and the right of the United States to assert its claim for offsets, claims or demands which it has asserted or could have asserted against the petitioner in Docket 332-B or in former Docket No. 332-A known as the Royce 151 claim, are reserved to the United States, which may assert such offsets and counterclaims in any case now or hereafter pending before the Indian Claims Commission, including any of the claims reserved herein under paragraph 4 hereof.

(6) This stipulation and entry of final judgment shall not be construed as an admission by any party as to any issue for purpose of any other case.

(7) This offer, in the event it is acceptable to your Department, shall be subject to approval by the Yankton Sioux Tribe of Indians, the Secretary of the Interior or his authorized representative, and the Indian Claims Commission.

(8) This offer shall remain open for 45 days, until July 23, 1972. If not accepted by that date, the offer shall automatically stand withdrawn. If the offer is accepted, we also agree to make all reasonable efforts to obtain the approval of the Yankton Sioux Tribe, and the Secretary of the Interior or his authorized representative. It is further agreed that responsible

officials and representative members of the Yankton Sioux Tribe will be present to testify on behalf of the Tribe on the compromised settlement before the Indian Claims Commission. In the event of such approval, we will be pleased to cooperate with appropriate representatives of your Department in preparing and submitting the necessary stipulations, joint motions and other documents necessary to accomplish settlement.

We are enclosing a "Proposed Stipulation for Entry of Final Judgment" for your review and approval in the event the offer of settlement is accepted by you.

Respectfully yours,

WILKINSON, CRAGUN & BARKER

By: Angelo A. Iadarola
Attorney of Record for
Yankton Sioux Tribe of
Indians, Docket No. 332-B

[Exhibit A.]

8. By letter dated July 20, 1972, the defendant replied accepting the plaintiff's proposal for compromise and settlement subject to certain conditions, namely that the compromise be approved by the members of the Yankton Sioux Tribe, and the Secretary of the Interior, and that the tribe authorize its members to appear as witnesses at the hearing on the settlement before this Commission. The letter states:

July 20, 1972

Angelo A. Iadarola, Esquire
Wilkinson, Cragun & Barker
1616 H Street, N. W.
Washington, D. C. 20006

Dear Mr. Iadarola:

The offer to settle the claims in Yankton Sioux Tribe v. United States, Docket No. 332-B, before the Indian Claims Commission, for the sum \$4,750,000 as outlined in your letter of June 8, 1972, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Yankton Sioux Tribe of Indians.

2. That the approval of the settlement and the resolution of the Yankton Sioux Tribe be secured from the Secretary of the Interior or his authorized representative.

3. That responsible officials and representative members of the Yankton Sioux Tribe be present to testify in behalf of the tribe on the compromise settlement at a hearing before the Indian Claims Commission.

The Department of Justice will be happy to collaborate with you on the terms of the stipulation and the appropriate motions and orders necessary to conclude the settlement subject to the conditions specified herein. The Joint Motion for Entry of Judgment should include a list of the documents which will be introduced in support of the settlement such as: (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letter of approval of the settlement by the Department of Interior, and (4) such other papers that will be offered in evidence at the hearing on the settlement. It will be necessary to furnish the defendant with copies of these documents.

Sincerely,

/s/ Kent Frizzell
Kent Frizzell
Assistant Attorney General
Land and Natural Resources Division

[Exhibit B.]

9. Pursuant to the offer and acceptance, a Stipulation for Entry of Final Judgment was signed by the attorneys for the parties and

later by representatives of the Yankton Sioux Tribe. The stipulation reads:

Before the
INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE OF INDIANS,)	
)	
Petitioner,)	
v.)	Docket No. 332-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated by the parties, through their counsel, as follows:

1. All claims asserted in Indian Claims Commission Docket No. 332-B shall be settled by entry of final judgment in the Indian Claims Commission in the amount of \$4,750,000.00, except those claims reserved in paragraph 2 herein. In particular, this settlement shall not affect in any way the claims involved in Docket No. 332-C before this Commission and in Docket Nos. 342-70 and 343-70 before the United States Court of Claims.

2. Specifically this settlement shall not affect in any way the following claims in Docket No. 332-B or any procedural or substantive defenses the defendant may have thereto:

a. any claims petitioner may have or assert for an accounting for the period commencing July 1, 1951; and

b. any claims petitioner may have or assert arising from the sale of its reservation lands pursuant to the Agreement of December 31, 1892, 28 Stat. 314.

3. The stipulation and entry of final judgment does not take into consideration any offsets, claims

or demands which defendant has asserted or could have asserted against the petitioner in Docket No. 332-B, Docket No. 332-C and in the former Docket No. 332-A, known as the Royce 151 claim. Any such offsets, claims or demands which defendant has asserted or could have asserted therein are reserved to the United States, and it is agreed that the United States may assert such offsets and counterclaims in any case now or hereafter pending before the Indian Claims Commission, including any of the claims reserved by the petitioner herein under paragraph 2 hereof.

4. The final judgment shall be in favor of the Yankton Sioux Tribe, petitioner, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

5. With the exception of the claims not affected by this settlement listed in paragraph 1, supra, and the two claims reserved by petitioner in paragraph 2, supra, entry of final judgment in said amount of \$4,750,000.00 shall finally dispose of all rights, claims, or demands which petitioner has asserted or could have asserted with respect to the subject matter of this suit, and petitioner shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action.

6. This stipulation for entry of final judgment shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

/s/ Kent Frizzell
Kent Frizzell
Assistant Attorney General

/s/ Marvin E. Schneck
Marvin E. Schneck
Attorney for Defendant

/s/ Angelo A. Iadarola
Angelo A. Iadarola
Attorney of Record for Petitioner
Yankton Sioux Tribe of Indians

Approved and joined in by:

/s/ Cecil Provost
Cecil Provost, Chairman

/s/ Evelyn Blackmoon
Evelyn Blackmoon, Secretary

[Exhibit C.]

10. The Yankton Sioux Tribal Business and Claims Committee, plaintiff's governing body, having been kept informed of the status of the settlement negotiations by its counsel, then called a meeting of the Yankton Sioux Tribal General Council for August 22, 1972, to consider the proposed settlement.

11. Well in advance of the meeting, notices were posted in the usual and customary places on the reservation and copies of the notice were mailed to members of the tribe. In addition, local newspapers and radio and television stations carried notices of the proposed meeting. Witnesses testified that the announcements of the meeting were widely disseminated.

12. The Commission finds that there was sufficient notice to tribal members of the meeting of August 22, 1972, which notice conformed with the requirements of the tribe's constitution.

13. A meeting of the Yankton Sioux Tribal Business and Claims Committee was called for the morning of August 22, 1972. At the meeting, which was attended by seven tribal officers, Mr. Charles James, the Superintendent of the Yankton Agency for the Bureau of Indian Affairs, and claims

attorneys Angelo A. Iadarola and Patricia L. Brown, the proposed settlement was explained by Mr. Iadarola. Questions were asked and answered by the claims attorneys at this meeting. Tribal officers later expressed their support of the compromise settlement to the tribe as a whole at the Tribal General Council meeting.

14. The Tribal General Council meeting was held on August 22, 1972, at which time the proposed settlement was fully explained and discussed. The meeting was attended by approximately 160 adult members of the tribe, officials of the Bureau of Indian Affairs, and the claims attorneys. A report dated August 22, 1972, prepared by plaintiff's attorneys and entitled "Report to the Yankton Sioux Tribe, Re: Proposed Settlement in Docket No. 332-B," was distributed to all those attending the General Council meeting and was read in its entirety by Miss Patricia L. Brown to the meeting. Mr. Iadarola then thoroughly explained the history of the claims, the nature of the proposed settlement and the means by which the compromise was reached. A lengthy discussion followed during which Mr. Iadarola answered the many questions posed by members of the tribe. The attorneys' comments and the subsequent question and answer session were translated into the Dakota language by the tribe's official interpreter, Llewellyn Selwyn.

15. The Yankton Tribal General Council voted, by a vote of 125 to 0, to accept the proposed compromise settlement. Its approval was embodied in the following resolution:

Resolution No. 73-4

R E S O L U T I O N

YANKTON SIOUX GENERAL COUNCIL

WHEREAS, the Yankton Sioux Tribe of Indians filed a claim with the Indian Claims Commission, identified as Docket No. 332-B, demanding from the United States an accounting for tribal funds and properties managed and controlled by the United States on behalf of the Tribe; and

WHEREAS, on August 25, 1965, the United States responded to the Tribe's petition with a report which set out various funds collected and managed on behalf of the Tribe by the United States; and

WHEREAS, following an extensive investigation of the legal and factual issues involved and the preparation of the reports by experts retained by the Tribe and following extended negotiations with the government counsel, attorneys for both parties have reached a proposed settlement which would compromise and settle the claims in Docket No. 332-B, other than those expressly reserved, for a net judgment in the amount of \$4,750,000 on the terms and conditions set forth in the stipulation attached to this resolution; and

WHEREAS, the Yankton Tribal Council has had a written report and an oral report from Angelo A. Iadarola of Wilkinson, Cragun & Barker, the Tribe's claims attorneys, concerning all the facts relevant to the litigation and the proposed compromise settlement and members of the Yankton Tribal Council have had an opportunity to question Mr. Iadarola on all aspects of said compromise; and

WHEREAS, a full discussion has been held with respect to possible advantages and disadvantages in the further prosecution of the case as compared to the advantages and disadvantages of accepting the proposed settlement; and

WHEREAS, representatives of the Bureau of Indian Affairs of the Department of the Interior have

been present at this meeting of the Yankton Tribal Council at the request of the Tribe and the claims attorneys and have observed the discussion and presentation concerning the proposed settlement and the questions and answers relating thereto; and

WHEREAS, the Yankton Tribal Council believes that it is fully informed of the terms and conditions of the proposed compromise and that the settlement of the claim in Docket No. 332-B for the final amount of \$4,750,000 is advisable under all the circumstances and that it is a fair and reasonable settlement of said claims;

NOW, THEREFORE, BE IT RESOLVED by the Yankton Tribal Council of the Yankton Sioux Tribe of Indians that the compromise and settlement of the claims in Docket No. 332-B is hereby approved and the claims attorneys are authorized to enter into such stipulation on behalf of the Tribe as may be necessary to accomplish the same.

BE IT FURTHER RESOLVED that Cecil Provost and Evelyn Blackmoon, the Chairman and Secretary of this meeting, are hereby authorized to execute the proposed stipulation and that the following are authorized to appear and testify in a hearing before the Indian Claims Commission with respect to the proposed settlement and the action taken by the Tribe with respect thereto scheduled for September 7, 1972:

Cecil Provost, Chairman
Llewellyn Selwyn
Leonard Hare, Jr.

BE IT FURTHER RESOLVED that the Secretary of the Interior or his duly authorized representative and the Indian Claims Commission are hereby requested to approve the proposed settlement and the stipulation for entry of final judgment as set out above.

CERTIFICATION

I, the undersigned, as Secretary of the Yankton Sioux Tribe hereby certify that the General Council of the Tribe is composed of all adult members of the

Tribe of whom 160 members, constituting a quorum, were present at the general meeting thereof, duly and specially called, noticed and convened and held this 22nd day of August, 1972, that foregoing resolution was duly adopted at said meeting by a vote of 125 for and 0 against, and that it was not in any way rescinded or modified.

Dated this 22d day of August, 1972.

/s/ Evelyn Blackmoon
Evelyn Blackmoon
Secretary

ATTEST:

/s/ Cecil Provost
Cecil Provost
Chairman

AUTHENTICATION OF SIGNATURES

I certify that the Chairman and the Secretary of the Yankton Tribal Council, who are personally known to me, subscribed their names to the foregoing resolution in my presence on this 22d day of August, 1972.

/s/ Charles James
Bureau of Indian Affairs
Department of the Interior

[Exhibit K.]

16. A representative of the Bureau of Indian Affairs attended the meeting of August 22, 1972, and on the basis of his report, as well as information on the merits of the proposed settlement supplied to the Commissioner of Indian Affairs by the attorneys for the petitioner, the Department of the Interior, by the following letter dated

August 30, 1972, approved the proposed settlement:

United States Department of the Interior
Bureau of Indian Affairs
Washington, D. C. 20242

August 30, 1972

Tribal Operations

Wilkinson, Cragun & Barker
1616 H Street, N. W.
Washington, D. C. 20006

Gentlemen:

You requested our approval of a proposed compromise to settle the claims in Indian Claims Commission Docket No. 332-B, except for certain claims identified in the "Stipulation for Entry of Final Judgment," for a net final judgment of \$4,750,000.00 in favor of the Yankton Sioux Tribe of Indians.

Your offer, addressed to the Acting Attorney General on June 8, 1972, was accepted by the Assistant Attorney General on July 20, 1972, with conditions. One was that the proposed settlement be approved by appropriate resolution of the governing body of the Yankton Sioux Tribe of Indians. Another was that the approval of the settlement and the resolution of the Yankton Sioux Tribe be secured from the Secretary of the Interior or his authorized representative.

Prosecution of Docket No. 332-B is governed by one contract. Claims Contract No. I-1-ind. 17495, dated November 1, 1940, between the Yankton Sioux Tribe and Attorney Ernest L. Wilkinson, was approved on January 17, 1941, for a period of ten years beginning with the date of approval. The contract has been extended several times. The last extension, which was approved on February 28, 1972, was for a period of two years beginning September 7, 1971. An assignment by Mr. Wilkinson of his interest in the contract to Wilkinson, Cragun and Barker, effective as of January 31, 1964, was approved on August 4, 1964.

Entry of final judgment in the amount of \$4,750,000.00 in favor of the Yankton Sioux Tribe, petitioner, shall dispose of all claims in Docket No. 332-B except any accounting after June 30, 1951, claims arising from the Agreement of December 31, 1892 (28 Stat. 314), claims in Docket No. 332-C, claims asserted in the Court of Claims, and offsets as described and set out in the "Stipulation for Entry of Final Judgment." No review from the entry of final judgment is to be sought or appeal to be taken by either party.

You took the proposed settlement to the Yankton Sioux Tribe at a General Council meeting held in Marty, South Dakota, on August 22, 1972. A representative of this Bureau was present and reported on it.

Notices were mailed to members of the Tribe well in advance of the meeting. Announcements were broadcast over radio and TV stations. Notices were posted in several Post Offices and in other public buildings within those areas where most of the Yankton Sioux live.

The meeting was well attended with 150 [sic] adult Yankton Sioux present. A copy of a report on the proposed settlement was distributed to each person present. It was read in its entirety at the meeting. You then explained and discussed the claims and the proposed settlement. A lengthy question and answer period was had during which you answered all questions asked. The matter was discussed by the members. Services of an interpreter were used for the benefit of those few who may not have a good understanding of the English language. The Sioux present appeared to understand your explanations and the discussions. A vote was then taken of the Sioux on acceptance or rejection of the proposed settlement. It was accepted by adoption of Resolution No. 73-4, dated August 22, 1972, by a vote of 125 for and 0 against. The resolution was signed by the Chairman and Secretary of the General Council and the representative of this Bureau certified that the Chairman and the Secretary were personally known to him and subscribed their names to the resolution in his presence. We are satisfied that the meeting was well attended, that the Sioux who voted on the proposed settlement reasonably understood it, that they were representative of the Yankton Sioux Tribe, and that the voting expressed the views of the tribal membership. The resolution is hereby approved.

The claims to be disposed of by the proposed settlement are for amounts found or alleged due from an accounting of tribal trust funds and property as more specifically set out, with stated exceptions, in the "Stipulation for Entry of Final Judgment." An exact determination as to what is involved in the proposed settlement would require a detailed examination of the numerous financial transactions covering a period of about 120 years. An accounting of this nature and such a review under the circumstances is obviously not feasible for us to perform. However, from the information that you have furnished us, and the explanation of the claims and the proposed settlement that you made to the members of the Yankton Sioux Tribe at the General Council meeting held on August 22, 1972, we find no reason to believe that disposition of the subject claims on the part of the tribe in return for \$4,750,000.00 is not just and proper. Accordingly, the proposed settlement is hereby approved.

Sincerely yours,

(signed) John O. Crow
Deputy Commissioner

[Exhibit L.]

17. At the hearing before this Commission held September 7, 1972, the following witnesses testified regarding the approval of the settlement by the Yankton Sioux Tribal General Council on August 22, 1972:

(1) Cecil Provost, Chairman of the Yankton Sioux Tribal Business and Claims Committee; (2) Llewellyn Selwyn, the tribe's official Dakota interpreter; (3) Leonard Hare, Jr.; and (4) Charles James, official of the Bureau of Indian Affairs and Superintendent of the Yankton Agency.

The witnesses testified as to the tribe's constitutional requirements for calling a meeting of the Yankton Sioux Tribal General Council, and that these requirements were satisfied with substantially all tribal

members receiving notice of the meeting. They further testified that the tribe's constitution sets a quorum requirement for conducting business at twenty-five members, and that the 160 members who actually attended the August 22 meeting constituted an exceptionally large turnout. The witnesses also testified that the proposed settlement had been fully and clearly explained to the tribe at the General Council meeting, both in English and in the Dakota language, that members of the tribe asked numerous questions regarding the settlement and that these questions were answered by the attorneys and that, after discussion ended, the General Council voted overwhelmingly to accept the settlement. The witnesses expressed their opinion that the tribal members fully understood the terms of the settlement, that the tribal members were fully satisfied with the settlement, and that the settlement was fair and equitable to the tribe.

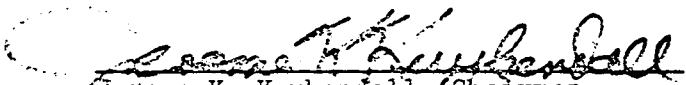
At the hearing all documents and correspondence submitted by the parties in support of the settlement were received in evidence.

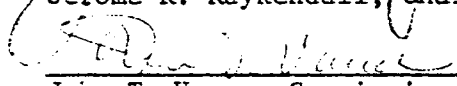
18. From the testimony presented at the hearing on September 7, 1972, and the joint exhibits presented into evidence, the Commission finds that the proposed settlement was fully and fairly explained to the tribal members in attendance at the meeting of August 22, 1972, and that they were sufficiently informed to make an intelligent choice on the proposed settlement and that they did make such a choice in approving the settlement.

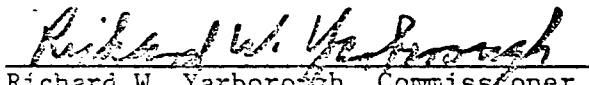
19. Based on the record in this case and the testimony of the witnesses, the approval of the proposed compromise settlement by the Commissioner of Indian Affairs and the Yankton Tribal General Council and representations by counsel for all the parties that the settlement is fair as to the plaintiff and to the government, the Commission finds that the settlement is fair to all parties and has been freely entered into by them, and grants the joint motion of the parties for entry of final judgment. Judgment in the amount of \$4,750,000.00 is granted to the Yankton Sioux Tribe of Indians.


20. The claims for an accounting for the period of July 1, 1951, to date, and for claims arising from the Agreement of December 31, 1892, 28 Stat. 314, are continued before this Commission and will be given a new docket number.

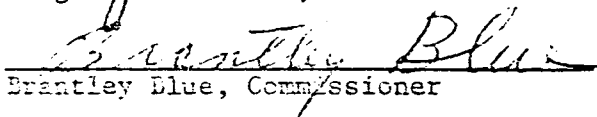
The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of the petitioner in the amount of \$4,750,000.00 in settlement of those claims in this docket with the exception of the claims referred to as being reserved.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner