

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, IN ITS OWN)
RIGHT AND DAN MADRANO, LLOYD TOUNWIN)
AND ANDREW DUNLAP ON RELATION OF THE)
CADDO TRIBE OF INDIANS AND THE CADDO)
TRIBE OF OKLAHOMA EACH ON BEHALF OF)
OTHERS SIMILARLY SITUATED AND ON)
BEHALF OF THE CADDO TRIBE AND VARIOUS)
BANDS AND GROUPS OF EACH OF THEM)
COMPRISING THE CADDO TRIBE AND NATION,)

Plaintiffs,)

THE ALABAMA-COUSHATTA TRIBES OF TEXAS AND)
THE COUSHATTA INDIANS OF LOUISIANA,)

Intervenors,)

THE WICHITA INDIAN TRIBE OF OKLAHOMA AND)
BANDS AND GROUPS OF INDIANS WHICH HAVE BEEN)
OR WHICH ARE AFFILIATED WITH THE WICHITA)
INDIAN TRIBE OF OKLAHOMA, INCLUDING BUT)
NOT LIMITED TO THE WICHITA, WACOS, KEECHIS)
AND TOWACONIES,)

Second Intervenors,)

) Docket No. 226

THE TONKAWA TRIBE OF INDIANS OF OKLAHOMA)
AMALGAMATED WITH AND SUCCESSORS IN INTEREST)
TO THE TEXAS TONKAWA TRIBE AND THE TEXAS)
LIPAN TRIBE AND THE TEXAS KARANKAWA TRIBE,)

Third Intervenors,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: January 24, 1975

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings of fact, numbered 1 through 49, previously

entered herein on March 8, 1956, 4 Ind. Cl. Comm. 201, as amended January 2, 1957; on January 22, 1960, 8 Ind. Cl. Comm. 354; and on October 27, 1961, 9 Ind. Cl. Comm. 557, as amended August 30, 1968.

50. Identification of Parties and Capacity to Bring Suit.

(a) The Caddo. The identification of the Caddo Tribe of Oklahoma and the capacity of said tribe to bring this action before the Indian Claims Commission has been previously established by the Commission. See 4 Ind. Cl. Comm. 203-04 (1956).

(b) The Alabama and Coushatta. The entity known as the "Alabama and Coushatta Tribes of Texas" is an organized tribe of American Indians residing within the territorial limits of the United States and incorporated pursuant to Section 16 of the Act of June 18, 1934, 48 Stat. 984, as amended by the Act of June 15, 1935, 49 Stat. 378. The Coushatta Indians of Louisiana are an identifiable group of American Indians residing within the territorial limits of the United States whose membership includes Indians of both Alabama and Coushatta descent.

(c) The Wichita. The Wichita Indian Tribe of Oklahoma and Affiliated Bands and Groups is an organized tribe of American Indians residing within the territorial limits of the United States.

(d) The Tonkawa. The Tonkawa Tribe of Indians of Oklahoma is an organized tribe of American Indians residing within the territorial limits of the United States. The tribe was organized in its presently constituted form pursuant to the Oklahoma Indian Welfare Act of June 26, 1936, 49 Stat. 1967.

All of these tribes and groups have the capacity, under Section 1 of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, to bring suit before the Commission on these claims.

51. The Territory at Issue. The area claimed under aboriginal title by the plaintiffs in their amended complaint, filed with the Commission on January 6, 1970, consisted of all of the present State of Texas lying east of the eastern boundary line of Royce Area 478 on Royce's "Map of Texas and Portions of Adjoining States" in Part 2 of the Eighteenth Annual Report of the Bureau of American Ethnology, 1896-97, as well as an area within the present States of Oklahoma, Arkansas, and Louisiana located within the boundaries described as follows in said amended complaint:

Commencing at a point where the Red River boundary line of the states of Oklahoma and Texas intersects the Meridian of 98° West Longitude; thence due north on said Meridian to the north boundary line of the state of Oklahoma; thence east along the north boundary line of the state of Oklahoma to a point where the Arkansas River intersects said boundary; thence down the Arkansas River to the Mississippi River; thence down the Mississippi River to the mouth of the Red River at 31° north latitude; thence west on said latitude to the boundary line between the states of Louisiana and Texas; thence north and west along the boundary line of the state of Texas to point of beginning.

In addition, the plaintiffs claimed they held recognized title to two reservations in Texas delineated as Royce Areas 512 and 513 on the above-mentioned "Map of Texas and Portions of Adjoining States."

The three separate intervenors alleged aboriginal title to large areas in the present States of Oklahoma, Louisiana, and Texas which

partially overlap the area claimed by the Caddo plaintiffs in their amended complaint.

At trial the plaintiffs attempted to prove aboriginal title to only a portion of the area so claimed in their amended complaint. The reduced area so claimed and, therefore, presently at issue in this proceeding represents that area which in the opinion of plaintiffs' expert, Dr. Helen Hornbeck Tanner, was used and occupied by the Caddo Tribe in 1804. See Pl. Ex. T-216, Helen H. Tanner, The Territory of the Caddo Tribe of Oklahoma, at 48-66, Appendix A. Dr. Tanner's area includes all of the present States of Arkansas, Louisiana, Oklahoma, and Texas circumscribed by a line beginning near the headwaters of the Saline River in Garland County, Arkansas, and running directly south to the Louisiana line in southwestern Union County, Arkansas, and then proceeding south in Louisiana as far as the town of Colfax, in Grant Parish. The line then turns west and proceeds along the entire length of the ridge of the Kisatchie Wold from the Red River west to the watershed between the Trinity and Navasota Rivers, passing into Texas just below the Toledo Bend Reservoir on the Sabine River and continuing as far west in Texas as the town of Bedias in northeastern Grimes County. It then turns north and proceeds by north and northwest meanders to the Texas-Oklahoma border on Red River at Sivell's Bend near Marietta, Love County, Oklahoma. In Oklahoma the line continues northward to the Washita River at the mouth of Cherokee and Sandy Creeks, east of Paul's Valley in Garvin County, Oklahoma, where it turns eastward following the divide between the waters of the Arkansas and Red Rivers into Arkansas and to the place of beginning.

52. Sovereignty over the Claimed Territory. United States sovereignty over what is now the States of Arkansas, Louisiana, Oklahoma,

and Texas was acquired from prior sovereigns at different times during the first half of the 19th century. Under the Treaty of April 30, 1803, 8 Stat. 200, the United States purchased the Louisiana Territory from the French Republic. The western boundary of the Louisiana Territory had never been determined and, as a result, Spain and the United States were at odds over the boundary between Louisiana and Texas from 1803 until the Treaty of February 22, 1819, 8 Stat. 252, set the boundary at the Sabine River. Before the treaty, both parties claimed the region of western Louisiana between the Sabine River and the Arroyo Hondo (located west of the Red River-Mississippi River Valley). In 1806, local commanders of United States and Spanish forces agreed to treat this region as neutral territory, but in 1812 the United States, without treaty sanction, admitted Louisiana to the Union and set the Sabine River as its western boundary. The present State of Texas came under United States sovereignty with its admission to the Union on December 29, 1845.

53. The Caddo in the Prehistoric Period. The plaintiffs herein are the remnants of a large cultural grouping of Caddoan speaking Indians who at one time occupied the area of what is now eastern Texas, southeastern Oklahoma, southwestern Arkansas, and northwestern Louisiana. Archaeological evidence indicates the presence of these Indians in this general area for a period of several hundred years prior to the advent of recorded history. Occupations believed to reflect the Caddo cultural tradition are found in the Arkansas River Basin of eastern Oklahoma; in the Red River Basin of southeastern Oklahoma, northeastern Texas,

southwestern Arkansas, and northwestern Louisiana, in the Ouachita River Basin of southcentral Arkansas and northern Louisiana; and in the basins of the Sabine and the Neches and Angelina Rivers of western Louisiana and eastern Texas.

54. The Caddo in the 16th, 17th, and 18th Centuries. The earliest European contact with the Caddo occurred in 1542 when DeSoto's expedition encountered Caddo tribes in Arkansas and in east Texas. Subsequent contacts by the French and Spanish during the 17th and early 18th centuries became increasingly more frequent, which indicates that the Caddo continued to use and occupy the general area of eastern Texas, southeastern Oklahoma, southwestern Arkansas, and northwestern Louisiana during this period. There is no evidence indicating that other tribes of Indians were using and occupying this area at the same time.

It was during this period that the Caddo were identified as grouped into three confederacies--the Kadohadacho, the Natchitoches, and the Hasinaí.

55. The Caddo Confederacies in the 18th Century. Each of the three Caddo confederacies was composed of several different tribes identified with separate regions located within the Caddo aboriginal area. The Kadohadacho Confederacy, with an estimated population of 2,000 persons at the beginning of the 18th century, was originally composed of four tribes--the Nanatscho, Upper Natchitoches, Upper Nasoní, and Kadohadacho. In the 18th century, as in earlier times, the Kadohadacho Confederacy used and occupied the area around the big bend of the Red

River in what is now southwestern Arkansas and the area farther up Red River where the river forms the present boundary between southeastern Oklahoma and northeastern Texas. By the end of the 17th century, the Cahinnio and the Mento, Caddoan tribes who had lived between the Red and Arkansas Rivers in west-central Arkansas, had joined the Kadohadacho Confederacy at the big bend of Red River, as had a portion of the Yatasi Tribe who had previously lived farther down the Red River near what is now Shreveport, Louisiana.

In the 18th century and before, the Natchitoches Confederacy of Caddo lived in the Red River Valley in western Louisiana around the present town of Natchitoches. This confederacy was composed of the Choy, Doustioni, and Natchitoches Tribes, together with portions of the Ouachita Tribe, who before 1690 had lived along the middle Ouachita River in northeastern Louisiana, and part of the Yatasi Tribe from the Shreveport area.

The third and largest group was the Hasinai Confederacy whose locale in the 18th century and before was the area of east Texas between the Trinity River and Bayou Attoyac in the present counties of Nacogdoches, Cherokee, Rusk, and Houston. This confederacy, with a population estimated at 4,000 to 5,000 persons in the early 18th century, consisted of several tribes, including the Hainai, Nacogdoches, Nabedache, Lower Nasoni, and Nadaco (Anadarko).

There were also two other Caddo tribes, apparently not affiliated with any one of the Caddo confederacies, who before and during the 18th

century, lived within the area of Caddo use and occupancy. The Aidaí Tribe lived in western Louisiana between the Red and Sabine Rivers near the present town of Robeline in Natchitoches Parish. The Ais, or Eyeish, Tribe lived west of the middle Sabine River in the present Texas Counties of San Augustine and Sabine.

The evidence herein shows that from time immemorial until the last quarter of the 18th century the Caddo exclusively used and occupied the territory in the present States of Arkansas, Louisiana, Texas, and Oklahoma circumscribed by a line on the east generally following the 93rd Meridian of West Longitude from Hot Springs, Arkansas, south to Colfax, Louisiana; by a line on the south generally following the 31st Parallel of North Latitude from Colfax, Louisiana, westward to the Trinity River in Texas; by a line on the west following the course of the Trinity River northward to its intersection with the 96th Meridian and then proceeding along said longitudinal line northward to a point near Ashland, in Pittsburg County, Oklahoma, where it meets the divide between the waters of the Arkansas and Red Rivers; and by a line on the north following said divide eastward to the place of beginning at Hot Springs, Arkansas.

56. Locations Near the Caddo of Other Tribes in the 18th Century. The group of several tribes which during the 19th century became known collectively as the Wichita and Affiliated Tribes had first been observed by Europeans in the early 16th century along the Arkansas River in Kansas. Subsequent contacts in the 17th and early 18th centuries reveal that Wichita tribes were located on the plains of Kansas and northern Oklahoma. During the

first half of the 18th century the Wichita tribes were forced by the Osage to migrate southward and westward. By the mid-18th century the Wichita were on the Red River where they established twin villages on opposite sides of the river near Spanish Fort in Montague County, Texas. These villages were occupied until early in the 19th century. Groups of Wichita are known to have roamed as far south as Milam County, Texas, west of the Brazos River, during the mid-18th century. During this period the Wichita tribes were, however, primarily located to the west of the Cross Timbers (at approximately the 98th Meridian) in what is now Oklahoma and Texas where they occupied an area also used by other Indians, particularly the Comanche, Kiowa, and Kiowa-Apache. During the latter part of the 18th century there is evidence of scattered Wichita presence on the fringes of the Caddo aboriginal area. In the 1760's there was a settlement of Tawakoni and Iscani (Waco) Indians, both of which were Wichita affiliated tribes, near Lake Tawakoni, in present Rains County, Texas. Lake Tawakoni is on the western boundary of Caddo territory described in finding of fact No. 55, supra.

The Kichai were an autonomous tribe who associated often with the Caddo but more often, as time went by, with the Wichita affiliated tribes. Their language was related to that of both the Caddo and Wichita but sufficiently different to be unintelligible to both the Caddo and Wichita. The Kichai also appear to have possessed noticeably different physical characteristics from the Caddo and Wichita. The Kichai remained a separately identifiable tribe until after their removal from Texas

in 1859.^{1/} During the 18th century, the Kichai were found on the western periphery of Caddo territory in the present Texas Counties of Anderson, Freestone, and Leon.

The Tonkawa Tribe appears to have, in prehistoric times, occupied the Edwards Plateau region, west of present Austin, Texas, and to have been then driven southeastward under pressure from other tribes, probably Comanche and Lipan. The first European contacts at the end of the 17th century locate the Tonkawa near the Gulf coast in what are now Lavaca and Victoria Counties, Texas. In 1772 Athanase de Mézierès reported to the Governor of Spanish Texas that the Tonkawa were vagabonds " ... without fixed homes ... " roaming between the Trinity and Brazos Rivers. (3d Int. Ex. 1, at 66.) During the 18th century they ranged over a wide area of central Texas north and south of the Nacogdoches-San Antonio Road (El Camino Real) between the

^{1/} Dr. Tanner's opinion is that the Kichai were a part of the Caddo. This opinion is based primarily on John Sibley's 1805 reference to the Kichai. (Pl. Exs. T-216, at 55; T-105, at 722.) Sibley's reference does not say the Kichai were Caddo but only that the two tribes were closely associated. Furthermore, other references consistently distinguish the Kichai from other tribes. (See, e.g., 2d Int. Ex. 1, at 164-66, Wright, Indian Tribes of Oklahoma; Hodge, Handbook of American Indians, Part 1, A-M, at 682-83 (1907).) In 1837, the Report of the Standing Committee on Indian Affairs of the Senate of the Republic of Texas, lists the Kichai separately but groups them with the Wichita tribes. (Pl. Ex. T-123, at 23.) John R. Swanton, referring to the early 18th century Kichai, stated that they " ... seem to have been in the habit of attaching themselves now to one tribe and now to another, sometimes with a Caddo group but more often with the Wichita and their confederates." Source Material on ... the Caddo Indians (1942), at 56. Swanton's statement was equally true later in the Kichai history.

Trinity and San Antonio Rivers. They did not impinge upon Caddo territory during the 18th century.

Along the Gulf coastal plain in south and southeast Texas there were in the 18th century a number of small tribes--Akokisas, Patiris, Bidais, and Deadoses--all of whom were of Atakapan stock. The closest to the Caddo were the Bidai and Deadoses who lived in the valley of the Trinity River in the area of present Walker County. Although the Bidai and Deadoses spoke the Caddo language, they also maintained their own Atakapan language and maintained a separate tribal existence into the 19th century, as revealed by several references to them by observers during the first half of the 19th century. By the mid-19th century the tribes had disappeared, apparently their members absorbed by several different tribes including the Alabamas, the Coushattas, and the Caddo.

The Osage freely and fiercely roamed through eastcentral Oklahoma and westcentral Arkansas during the 18th century, north of the Kadohadacho Confederacy of Caddo on the Red River.

To the east of the Natchitoches Confederacy in Louisiana, there appears to have been an absence of any other Indians until the 1760's and 1770's when the Alabama Tribe began a migration westward from the tribe's aboriginal homeland in Alabama and formed

settlements near the west bank of the Mississippi River in present Louisiana.

57. The Decline of the Louisiana Caddo in the Late 18th and Early 19th Centuries. In 1775 the Kadohadacho Confederacy of Caddo had two villages in the Red River region--a principal village a little above the big bend and a smaller village on Caddo Lake in Caddo Parish, Louisiana, about 35 miles west of the main branch of Red River. The Kadohadacho also occupied the area between these villages. In 1777 a severe epidemic struck the entire region west of the Mississippi causing many deaths among both the European and Indian populations. This epidemic reached all three of the Caddo confederacies and sapped their strength considerably. About the same time, the Osage Indians commenced a series of attacks upon the Kadohadacho at the big bend of the Red River which continued for several years. With the advent of the Osage warfare, the Kadohadacho, already weakened by population losses due to the epidemic of 1777, considered moving southward below the big bend of Red River to escape the Osage. About 1790 the Kadohadacho did succumb to the constant Osage pressure. They abandoned their principal village at the big bend and moved southward to the other Kadohadacho

village at Caddo Lake which straddles what is now the Louisiana-Texas border in Caddo Parish, Louisiana, and Marion and Harrison Counties, Texas. In 1805, John Sibley, the United States Indian Agent at Natchitoches, reported that only 100 Kadohadacho warriors remained at the Caddo Lake village. (Def. Ex. 17, at 721.)

The Natchitoches Confederacy of Caddo also suffered serious setbacks during this period. They too had been struck by the 1777 epidemic. Before the end of the 18th century they witnessed the approach of several tribes migrating from east of the Mississippi. The Alabamas, who had begun moving into Louisiana in the 1760's, had by 1803 established a village at the Red River rapids near present Alexandria, Louisiana. By 1805 the Alabamas had a village near that of the Caddo on Caddo Lake. The Coushattas, who were closely affiliated with the Alabamas, are known to have first entered Louisiana around 1794 when they were located in what are now St. Landry and Evangeline Parishes. Before 1803 they had also established a village on the east bank of the Sabine River about 80 miles southwest of the town of Natchitoches. Available population estimates indicate that during the first decade of the 19th century the population of the Alabamas and Coushattas in Louisiana exceeded that of the Caddo.

The bellicose Choctaw constituted a real menace to the Natchitoches and Kadohadacho Caddo in western Louisiana from the time they arrived from the east in 1792 until 1807. The Choctaw had a village at the Red River rapids near Alexandria, Louisiana, in 1803, and in the years immediately following there are references to Choctaw locations west of the Red River above and below Natchitoches.

During the first decade of the 19th century several other tribes, having migrated from east of the Mississippi River, settled close to the territory of the Natchitoches Confederacy. The area near the rapids of the Red River at present Alexandria, Louisiana, appears to have been a popular location. There were groups of Apalachee, Biloxi and Bolusco Indians there between 1803 and 1805. During the years 1805 to 1810 there were settlements of Pascagoula and Taensa Indians at various points along the Red River between Natchitoches and Alexandria.

Sibley stated in 1805 that the Natchitoches Tribe had, sometime before 1805, moved to a point about 25 miles above the town of Natchitoches where there remained of the tribe only twelve men and nineteen women. Sibley reported that the tribe was "... gradually wasting away" (Def. Ex. 17, at 724) The same report stated that of the other Caddo tribes, the Yatasi, then on the Red River about 50 miles above Natchitoches, had but forty men, the Adais, near the Yatasi, but twenty men, and the Ais, near Nacogdoches, "... almost extinct ..., not being more than twenty-five souls of them remaining" (Id., at 721-22)

The last reference to the presence of Caddo below Caddo Lake is an

1816 reference to the village on Bayou Pierre, fifty miles north of Natchitoches. By 1805, all the Caddo in Louisiana were within the area subsequently ceded to the United States under the Treaty of July 1, 1835, 7 Stat. 470.

Pressure of white settlement was not the cause of the northward move of the Natchitoches Confederacy of Caddo. White migration into the area of the middle Red River was insignificant until years after the Caddo had left this area. Consolidation of the Caddo at Caddo Lake was caused by their dwindling numbers and the usurpation of their lands by the more powerful migrant tribes.

58. The Caddo Exodus from Louisiana. As early as 1825, the Caddo and the United States Indian Agent George Gray had agreed on what were then Caddo lands in Louisiana and Arkansas. These boundaries were subsequently set out as follows in the Treaty of July 1, 1835, supra, wherein the Caddo ceded their lands to the United States and agreed to move to Texas:

Bounded to the west by the north and south line which separates the ... United States from the Republic of Mexico between the Sabine and Red Rivers wheresoever the same shall be defined and acknowledged to be by the two governments. On the north and east by the Red River from the point where the said north and south boundary line shall intersect the Red River whether it be in the Territory of Arkansas or the State of Louisiana, following the meanders of the said river down to its junction with the Pascagoula bayou. On the south by the said Pascagoula bayou to its junction with the Bayou Pierre, by said bayou to its junction with Bayou Wallace, by said bayou and Lake Wallace to the mouth of the Cypress bayou thence up said bayou to the point of its intersection with the first mentioned north and south line following the

meanders of the said watercourses; but if the said Cypress bayou be not clearly definable so far then from a point which shall be definable by a line due west till it intersect the said first mentioned north and south boundary line, be the content of land within said boundaries more or less.

Of this area of approximately 1,000,000 acres, the Commission has previously found that as of July 1, 1835, the Caddo in Louisiana, being the remnants of the Kadohadacho and Natchitoches confederacies, were exclusively using and occupying an area of approximately 600,000 acres within the territory so ceded as described in finding of fact No. 12, at 4 Ind. Cl. Comm. 201, 212-13, as amended January 2, 1957.

From this area previously found to have been so used and occupied, the Louisiana Caddo moved to Texas in the late 1830's.

59. The Hasinai Confederacy of Caddo in Texas: 1800-1836. The Hasinai Caddo were removed from the periphery of the Caddo territory and were, therefore, little affected by the turmoil of the late 18th and early 19th centuries among the other two confederacies. The Kadohadacho Confederacy to the north and the Natchitoches Confederacy to the east shielded the Hasinai from the incursions of other Indians during this time. As a result, in the early 19th century the Hasinai Confederacy continued to use and occupy the area they had so used and occupied from time immemorial. They remained in a wide cluster of villages spread across the present east Texas counties of Nacogdoches, Cherokee, Rusk, and Houston.

Hasinai ascendancy in east Texas collapsed during the period from

approximately 1810 to 1838, brought about by a combination of white settlement of Texas and the arrival in Texas of several Indian tribes migrating westward to escape white settlements in the United States. During this period the Texas Caddo remained where they had been from time immemorial but their territory was overrun by whites and other Indian tribes.

From Louisiana in the early 19th century came a large migration of Alabama and Coushatta Indians who formed settlements in the territory adjoining the Hasinai. These Alabama and Coushatta settlements were located in present Polk, Tyler, San Jacinto, Trinity, and Angelina Counties. In these same counties there are early-19th century references to occupations by other tribes, including the Choctaw. Within the area aboriginally occupied by the Hasinai Caddo several migrant tribes apparently came and went as they pleased without either encouragement or threats from the Hasinai. The situation within the Hasinai territory is well described in an excerpt from the diary of one Jose Maria Sanchez who was a member of a Mexican Government Commission authorized to investigate the boundary between the United States and Mexico. Sanchez visited Nacogdoches in June 1828 and reported that

. . . .

[d]ifferent tribes of Indians such as the Tejas, Nadacos, Yguanes [Choctaw], Savanos [Shawnee], Cherokees, Kickapoos, Delawares, Cutchates [Coushatta], Alabamas, Quichas [Kichai], and Cados, continually enter Nacogdoches, but they are all peaceful and carry on their trade in the city with skins, corn, pumpkins, and beans. These tribes are located in the neighborhood of Nacogdoches, their pueblos being intermingled

with the settlements of the Americans who are scattered throughout Texas (Def. Ex. 23, at 283)

The statement is substantiated by numerous references in the record to the presence of these and other Indians in a wide area of east Texas surrounding Nacogdoches and including most of the area which had been the home of the Hasinai Caddo.

The white population of east Texas increased substantially during the early 19th century as settlers migrated to Texas from the United States until the Mexican Government outlawed further immigration in 1830. In 1806, the town of Nacogdoches had 500 white inhabitants. In 1834, Texas, east of the Brazos River, had a white population of approximately 10,600 persons of which 3,500 were at Nacogdoches and 2,500 were at San Augustine.

During these years, civil strife was almost continuous in Texas. From 1810 to 1821 Mexico was engaged in a war of independence from Spain. Anglo settlers in Texas supported independence and fought the Spanish in Texas during this time. Later in the 1830's the Texas War for Independence from Mexico took place culminating in Texas independence in 1836. Indian support was sought by the various factions during these wars but, except for limited instances such as the involvement of the Cherokee and other migrant tribes in the Fredonian Rebellion of 1826-27, the Indians apparently maintained neutrality during these conflicts.

60. The Caddo During the Years of the Texas Republic: 1836-1845.

In 1836, most of the Louisiana Caddo migrated to Texas, although some

apparently remained near Caddo Lake until about 1840 when these too went to Texas. After this removal to Texas, the three former Caddo confederacies became merged into one group.

With Texas independence, the whites in Texas immediately turned their attention to their Indian problems. Tension between the Indians and whites was high for several reasons. Mexicans were trying to incite the Indians in Texas in an attempt to overthrow the new Texas Government. At the same time the usual conflicts between settlers and Indians were causing a great deal of sporadic violence. Indian raids upon settlements were common by 1837. The Caddo joined with several of the migrant tribes as well as with the Wichita tribes and roamed well west of the Brazos River attacking white settlements. In 1838 Texas began a concerted program to exterminate or drive the Indians, including the Caddo, out of east Texas. A large number of Caddo were forced back into Louisiana by a Texas military contingent at this time.

For the next several years, the Caddos were dispersed. Some were reported in Arkansas and Texas, others in Oklahoma. Traditional accounts indicate that part of the Caddo went to Cross Timbers, then to Mexico, and finally returned to Cross Timbers.

After 1839 there are no references showing the Caddo in the claimed area of east Texas. The last Caddo villages in east Texas were the Hainai village in the southwest corner of Rusk County near New Salem and a village at Nacogdoches. The Hainai village was abandoned sometime between 1836 and 1839 and the village at Nacogdoches was abandoned in 1839.

On September 29, 1843, at Bird's Fort on the Trinity River, and on October 9, 1844, at Tehuacana Creek, the Republic of Texas and several Texas tribes, including the Caddo, entered treaties of peace and friendship. These treaties and the proceedings at the second of the treaties, demonstrate that the Republic of Texas and the Indians both understood that the Indians no longer had rights of ownership or occupancy to lands east of the line of trading houses to be established from Red River south along the Cross Timbers then west of Austin and San Antonio to the Rio Grande River, nor were they allowed even to cross the line without permission from the Texas authorities. See Pl. Ex. T-123, at 241-46; Pl. Ex. T-124, at 103-19.

By the time that Texas was annexed to the United States in 1845 the Caddo were congregated on the Brazos River along with the Wichita and other tribes. They never returned to east Texas.

61. 1846 Treaty Between the United States and Texas Indians. On May 15, 1846, the United States concluded a general peace treaty with several Texas Indian tribes, including the Caddo, Wichita, Comanche, Kichai, and Tonkawa, at Council Springs near the Brazos River. See 9 Stat. 844. Under the treaty terms, it was agreed that the tribes would thereafter acknowledge themselves to be under the protection of the United States, and that the United States would have the sole and exclusive right to regulate trade and intercourse with them. The treaty made no land cessions and granted no reservations.

62. Final Departure of the Caddo and Other Tribes from Texas. On February 6, 1854, the Texas State Legislature enacted a law providing for reservations for the Texas Indians on state public lands and authorizing the United States to select and survey twelve leagues of land for these reservations. As soon as the land was surveyed and marked, the Federal Government was to settle thereon the Texas Indians and to have control of them and establish such agencies and military posts as were necessary. The act also provided for reversion of the lands to the State of Texas when no longer used for Indians. In 1854 and 1855 the Federal Government selected and surveyed two reservation sites on the Brazos River above Waco. Congress appropriated funds for surveying these reservations and settling the Indians thereon. See 10 Stat. 315, 331 (1854). On one, Royce Area 512, a number of southern Comanche were settled. On the other, Royce Area 513, consisting of 37,152 acres, several tribes were settled, including the Caddo, Waco, Towakoni, Kichai, and Tonkawa. The Commissioner of Indian Affairs appointed Robert S. Neighbors to the post of Supervising Agent over the two reservations which were called the Brazos reserves.

With the establishment of these reservations, the hostility of the frontier citizens to the Indians grew more intense. In early 1859, Neighbors recommended to the Commissioner of Indian Affairs that all of the Texas Indians be removed north of the Red River to prevent a massacre of the Indians by the white settlers. On March 31, 1859, the Commissioner

of Indian Affairs ordered the relocation of the Texas Indians in the Indian Territory. In May white settlers attacked the Brazos Reservation, but a small force of Federal troops intervened to protect the Indians. Neighbors then called a council meeting at Fort Arbuckle in July 1859 which was attended by chiefs and headmen of the several tribes involved. It was decided at the council that immediate removal from Texas was essential to insure the safety of the Indians. Shortly thereafter Neighbors led approximately 1,500 Indians, including between 250 and 300 Caddo, on a forced march to the Washita River in Oklahoma. When Neighbors later returned to Texas he was murdered, apparently by angry white settlers. This removal marked the end of Caddo, Wichita, and Tonkawa presence in Texas. With the removal of the Indians, the lands upon which the reservations were located reverted to the State of Texas.

63. The Oklahoma Reservation. In 1855, the United States had entered into an agreement with the Choctaw and Chickasaw Nations in which these Indians leased to the Federal Government a large area to be used for permanent relocation and settlement of other Indian tribes. It was on a portion of this land, consisting of 743,257.19 acres and known as the Wichita Reservation, that the Caddo and the several other Texas tribes were settled in 1859. By the Treaty of April 28, 1866, 14 Stat. 769, the Choctaw and Chickasaw ceded to the United States all their right, title, and interest in this "leased district."

With the close of the Civil War, efforts were made to turn this area into a reservation for the Texas Indians. On October 19, 1872, an agreement was concluded between the Wichita, Caddo, and other tribes and the Commissioner of Indian Affairs. By the terms of the agreement the Wichita Reservation was set aside as a permanent home for the Texas Indians, in exchange for which the tribes ceded to the Government all of their right, title, and interest to any lands in Texas, Louisiana, the Indian Territory, or elsewhere in the United States. Although the Commissioner strongly urged ratification of this agreement, no action was ever taken by Congress upon his recommendation. The Indians, however, continued to occupy the Wichita Reservation.

On June 4, 1891, the United States and the "Wichita and Affiliated Bands of Indians," including the Caddo, concluded an agreement under which the Indians relinquished whatever rights they may have had in the Wichita Reservation in return for the United States allotting to each Indian 160 acres out of the Wichita Reservation. The 1891 Agreement was ratified by the Indian Appropriation Act of March 2, 1895, 28 Stat. 876.

In prior proceedings under this docket the Commission found that by the Act of March 2, 1895, supra, which ratified the agreement of June 4, 1891, the United States vested title to the Wichita Reservation in the Wichita, Caddo, and other affiliated bands residing there, that said grant confirmed the possession of the Caddos of a portion of the reservation since 1859, when they were placed there by the United States in substitution

for their reservation lands in Texas, from which they were removed by agreement with the United States, and that Caddo possession of an interest in the Wichita Reservation was in satisfaction of an obligation of the United States under the Treaty of 1846. See 19 Ind. Cl. Comm. 385, and accompanying order dated August 30, 1968.

CONCLUSIONS OF LAW

1. The Indian Claims Commission does not have jurisdiction to hear and adjudicate the claims of the three intervening parties herein. The limitations, set forth in Section 12 of the Indian Claims Commission Act, 60 Stat. 1049, 1052 (1946), on the presentation of claims before the Commission foreclose jurisdiction by the Commission over said claims. Accordingly, the Commission's prior orders under this docket granting intervention hereunder to said parties should be vacated, their motions to intervene denied, and their complaints in intervention dismissed.


2. The predecessors of the plaintiffs under this docket did not possess aboriginal title to the areas claimed in Counts II and IV of their amended complaint, filed January 6, 1970, at those times when United States sovereignty attached to said areas. Therefore, the claims of the plaintiffs against the United States for compensation for the taking of said lands are without merit.


3. The plaintiffs have no compensable claim against the United States arising out of their allegations of recognized title to Royce Areas 512 and 513 in Texas.

4. Accordingly, the plaintiffs' claims under Counts II and IV of said amended complaint should be dismissed.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner