

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE and bands)
thereof, ex rel., Pedro Mendez)
and Philemon Venego;)

THE MESCALERO APACHE TRIBE and)
bands thereof, ex rel., Solon)
Sombrero, Fred Pellman, Eric)
Tortilla and Victor Dolan;)

THE APACHE TRIBE OF THE MESCALERO)
RESERVATION on behalf of, or as)
successor to, the Lipan Apache)
Tribe and bands thereof, and the)
Mescalero Apache Tribe and bands)
thereof,)

Plaintiffs,)

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,)

Second Intervenors,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 22-C

Decided: March 14, 1975

FINDINGS OF FACT

The Commission makes the following findings of fact.

1. Parties.

(a) The principal tribal plaintiff herein is the Apache Tribe of the Mescalero Reservation, a duly incorporated tribe organized under the Act of June 18, 1934 (48 Stat. 984), and recognized by the Secretary of Interior as having the exclusive right to represent its membership. Included within the present membership of the plaintiff tribe, as enrolled on the Mescalero Apache Reservation in the State of New Mexico, are descendants of the aboriginal Lipan Apache Tribe and the aboriginal Mescalero Apache Tribe. The plaintiff, the Apache Tribe of the Mescalero Reservation, has the right and capacity under Section 2 of the Indian Claims Commission Act (60 Stat. 1050) to bring and maintain the instant claims in a representative capacity for and on behalf of the Lipan Apache Tribe and Mescalero Apache Tribe.

(b) The Tonkawa Indian Tribe of Oklahoma is an identifiable group of American Indians, organized under the Oklahoma Indian Welfare Act, 49 Stat. 1967, and has the right and capacity to bring and maintain an action under the Indian Claims Commission Act, supra. On April 19, 1972, the Commission granted in part the motion of the Tonkawa Indian Tribe to intervene in this docket for the sole purpose of permitting the Tonkawa Tribe of Indians to prove alleged rights of successorship to the Lipan interests in this case by establishing on the present record Tonkawa identification with the aboriginal owner of the Lipan claimed area.

2. Prior Proceedings.

a. On February 3, 1948, a petition docketed as No. 22 was filed before this Commission on behalf of the Apache Nation, wherein it was claimed that the Apache Nation held aboriginal title to an enormous area located in Arizona, New Mexico and Texas, and more readily identified as encompassing those lands within Royce Areas 688 and 689. Thereafter, an amended petition was filed on October 18, 1950, wherein it was sought to define separately the specific claims of the various Apache groups and to identify separately each of the areas allegedly used and occupied exclusively by each group from time immemorial. On May 25, 1959, a "Second Amended Petition" was filed separating from Docket 22 the claims of the Lipan Apache Tribe and the Mescalero Apache Tribe to those lands in the State of Texas.

b. On November 21, 1961, the defendant filed a motion to dismiss the "Second Amended Petition" in which the Lipan Apache Tribe and the Mescalero Apache Tribe were each claiming loss of their aboriginal lands in Texas. The Commission, after a hearing, entered an order on August 6, 1965, granting the defendant's motion and dismissing the plaintiff's petition for failure to state a cause of action against the United States upon which relief could be granted. Lipan Apache Tribe v. United States, 15 Ind. Cl. Comm. 532 (1965). In an accompanying opinion, the Commission held, that (1) the Apaches had no aboriginal rights to the claimed lands because the Republic of Texas had never acknowledged the existence of Indian aboriginal land rights prior to annexation in 1845 and therefore such rights did not

exist after Texas' admission into the Union; and (2) even if the Apaches possessed such aboriginal land rights, there could be no recovery against the United States for their subsequent extinguishment since at no time did the defendant ever have any proprietary interest in the public lands of Texas.

On appeal, the Court of Claims reversed the Commission's order dismissing the plaintiff's petition and remanded the case for further proceedings. Lipan Apache Tribe v. United States, 180 Ct. Cl. 487 (1967). In reversing the Commission, the court held that the record on appeal failed to show that Indian aboriginal land rights had been extinguished by the Republic of Texas or its predecessors in sovereignty. The court also held that, even though the United States never held a proprietary interest in the public lands of Texas, the Apache plaintiff could recover against the defendant for loss of aboriginal lands under clause 4 ("claims arising from the taking by the United States, whether as a result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant") or clause 5 ("claims based upon fair and honorable dealings . . .") if the proof established that by their conduct officials and troops of the United States drove the Indians from their Texas lands. Alternatively the Court indicated that the plaintiff might recover under clause 5 if the proof established that by its action, the United States entered into a special relationship with the Apache Tribe whereby the defendant had a special responsibility or duty to protect the Indians' aboriginal lands from the encroachments of third parties.

3. The Claimed Areas.

The principal plaintiff alleges on behalf of the Lipan Apaches and Mescalero Apaches aboriginal ownership to two separate but adjoining areas of land wholly situated within the State of Texas. The overall claimed area, in excess of 60 million acres, is bound generally on the west and south by the Rio Grande River, flowing southeasterly from its junction with the States of New Mexico and Texas about 15 miles north of the City of El Paso, Texas, to where the river empties into the Gulf of Mexico. The northern boundary of the overall area follows the common boundary of New Mexico and Texas east along the 32d parallel of north latitude; thence north along the common boundary of New Mexico and Texas, paralleling the 103d meridian of west longitude, approximately 125 miles to the northwest corner of Cochran County, Texas; thence generally southeasterly passing in a descending order north and east of the towns of Brownsfield, Big Spring, Bronte, Coleman, Brownwood, San Saba, Burnet, Austin, Yoakum, and Victoria, to Point Comfort; thence along the southern shoreline of Lavaca Bay to Port O'Connor. The eastern boundary follows the shoreline in a southwesterly direction from Port O'Connor to north of the Rio Grande River.

The dividing line between the aboriginal land claims of the Lipan Apache on the east and the Mescalero Apache on the west extends south from that point on the northern boundary of the overall area near Otis Chalk, Texas, to the westernmost point of the Amistad Reservoir on the Rio Grande River.

4. Cultural Unity - Social and Political Organizations.

The Lipan and Mescalero are Apachean tribes. There are five other tribes of Apache identity, namely the Jicarilla, Chiricahua, Western Apache,

Kiowa Apache and Navaho. Each of the seven tribes spoke the Southern Athapascan language and shared a basic pattern of behavior. However, there were dialectical differences, as well as conspicuous variations among them in certain customs and practices. Each of the seven tribes used and occupied a separate territory and formed a separate and distinct landowning entity.

With minor differences, the Lipan and Mescalero tribes were organized socially and politically along similar lines. The primary political unit of the Apaches was the family, or family group, consisting of father, mother, unwedded sons and daughters, and married daughters and their husbands. The people of the separate family groups identified with one another through their common language and descent, social and political customs, cultural attributes and intermarriage. Alliances for economic purposes, protection, and raiding were created or formed by interlocking family relationships, by joint economic activities and coalitions of family groups in proximity to one another. Each family group had its leader whose ascendancy resulted from some heroic exploit, experience or other attribute. An overall leader was usually selected from among the several family leaders.

The Apache people were seminomadic, with each tribe moving across large expanses in quest of wild plants and game. Hunting and gathering were the main sources of sustenance. Hunting was not strictly a group activity, and required family mobility in the seasonal pursuit of game. Among the game

animals sought were the bison, antelope, deer, and small animals, such as rabbits.

As gatherers, these tribes ranged over large areas to harvest prickly pears, mesquite, pinon seeds, wild pea, cactus fruits, mescal, and numerous other wild foodstuffs. Where soil was good and water available, some crops, notably maize, were raised. At such places, group areas, or rancherias, were temporarily established and maintained, or revisited during the growing season, while hunting and gathering activities were continued.

Linguistically and culturally the Apache Tribes in Texas differed from the surrounding Indian tribes, with whom they usually had a hostile relationship. Their northern neighbors and inveterate enemies, the Comanches, spoke a Shoshonean dialect. To the east were the Tonkawas, a tribe formed out of the amalgamation of many small independent bands of Indians that roamed central Texas in the 18th century. The Tonkawas were not of the Athapachan linguistic group although they showed some close similarities with the Lipans.

5. History of the Lipan Apaches.

(a) The Spanish Period (1541-1821).

Specific locations of the Lipan and other Apache groups before the 18th century are rather obscure. Spanish interest in the southwest region of what was later to be the United States began early in the 16th century. Historical sources indicate that, as early as 1541, the Spanish explorer, Coronado, made contact with Apache Indians on the plains of eastern New Mexico and west Texas. However, it was not until the late 1600's that serious efforts were made to explore and occupy this vast area.

Between 1699 and 1701, Spanish missions were established along the Rio Grande River in an effort to reach the Indians residing north of the river. Progressive northward expansion of the Spanish missionary frontier brought about the establishment, in 1718, of the mission and presidio at San Antonio.

When first known to the early Spanish inhabitants, the Lipan Apaches lived far to the northwest of San Antonio on the upper reaches of the Colorado, Brazos, and Red rivers. Gradually the Lipan Apaches were driven southward by their inveterate enemies, the warlike Comanches. In 1732, Lipans were using and occupying the San Saba and Llano river region above the Guadalupe River and did not customarily range southeast of San Antonio. By the 1740's the Lipans were settled 50 miles north of San Antonio with some elements of the tribe being further north on the headwaters of the San Saba River. Best estimates at this time placed the Lipan warrior strength at 166. During this same period the Comanches were in firm control and possession of the upper Colorado, Brazos, and Red rivers. A consequence of the increasing Comanche pressure was the diminution of Apache raiding north of San Antonio and their need to seek protection from Spanish authorities.

In 1749, a peace was concluded with the tribes north of San Antonio, with the Lipans assuring the Spanish that they wished to come under the care and instruction of the missionaries. In pursuance of those objectives a mission and a protecting presidio were established on the San Saba River at present Menard, Texas. The Lipan Apaches appeared at the San Saba

mission in small groups but refused to stay permanently. Apparently aware that the newly founded San Saba mission had aroused the enmity of the Comanches, the Lipans began to move south. The Comanches began repeated attacks on the presidio, and in 1758, they wiped out the mission. The Lipans retreated further southward under the Comanche pressure and eventually reached the Rio Grande River and the neighboring mountains. At the behest of the beleaguered Apaches, the Spanish established two missions, one in 1762 at present Montell in Uvalde County, the other in 1767 on the Nueces River at Camp Wood near Barksdale. Both missions were shortlived, succumbing to the repeated attacks of the Comanches and their allies.

Following the abandonment of the Spanish missions on the upper Nueces, the Lipan Apaches were vaguely described as living on the Frio, Nueces, and Rio Grande rivers. Between 1772 and the beginning of the Mexican revolution in 1821, official reports cite Lipan presence south of the Rio Grande in Coahuila, Nueva Viscaya, Sonora, Chihuahua, Nuevo Leon, and at such places in Texas as La Bahia (Goliad), the Rio Frio, Laredo, and at San Antonio de Bexar. Lipan population estimates for the same period range between 700 and 1500 persons. In 1807 Lt. Pike referred to the Lipans in terms of three bands numbering 300, 350, and 100 respectively. In 1820 the Lipans had suffered a serious defeat at the hands of the Spanish on the Guadalupe River and a further defeat on the Colorado River by the Tawacanos that greatly diminished their numbers. At the close of the Spanish era in 1821, Lipan Apaches were generally identified with an area in Texas that lay southwesterly from San Antonio through Frio, La Salle and Webb counties, thence northward along the Rio Grande through Dimmit and Maverick counties, thence north through Kinney and Edwards counties, and then eastward to San Antonio.

(b) Mexican Period (1821-1836)

There was little if any change in Lipan activities, locations, or population estimates during the Mexican period. The Comanches continued to harass the Lipans on their raids southward into Mexico. References to Lipans during this period show them to be in Coahuila, Mexico, at Santa Rose, Augua Verde, and across the Rio Grande at Laredo, and as far north as the rivers San Saba, Guadalupe, San Marcos, and raiding above the La Bahia road near Stephen F. Austin's new found colony. In 1819 the total Lipan population was estimated at 700. Because of the unsettled conditions during the Mexican regime, the Lipans, as well as some of the other tribes were left relatively undisturbed. However, in 1827 the Comanches routed a band of Lipans and Tonkawas on the San Marcos nine miles above Gonzalez.

(c) Republic of Texas (1836-1845).

The Republic of Texas period began on March 17, 1836, with the ad interim government of President David G. Burnet, and officially ended when Texas obtained statehood pursuant to the Joint Resolution of Congress of December 29, 1845 (9 Stat. 108). In the early days, the Republic was being invaded by the numerically superior forces of Mexico. President Burnet appointed M. B. Menard to confer with the Indians generally, with instructions that he should secure the neutrality of the Indian tribes pending the outcome of the struggle for Texas' independence from Mexico.

Sam Houston was elected the first President of the Republic of Texas in 1836. His announced Indian policy stressed peace and amity, and the maintenance of justice and good faith with the Indians. As a consequence there was a feeling of mutual trust between Houston and the Indians, especially the Lipan Apaches. Houston's peace policy was also based on practical considerations, since he was well informed of the fighting strength and military tactics of the various tribes. While there were difficult times with many of the Indian tribes in Texas throughout this period, the Lipans for one seemed to have enjoyed an officially favored status, for the Republic and the Lipans made common cause against their mutual enemies, the Comanches and Mexico. As President Houston observed, "The Lipans have always proved themselves valuable as friends and allies in the numerous expeditions which have been sent from the frontiers into the territories of the hostile Indians, and they may, in the future, be very successfully employed in the prosecution of the war against Mexico." (Def. Ex. 80, p. 73.)

On October 8, 1844, the Republic of Texas concluded a treaty "of Peace, Friendship and Commerce" with eleven Indian tribes, among them the Lipan and Comanche. (Texas Indian Papers, 1844-1845, No. 76.) The treaty was formally ratified by the Republic on January 24, 1845. Article II of the treaty set forth the declared policy of the Republic of Texas not to permit "any bad men to cross the line into the hunting grounds of the Indians" It is speculative that any such line was ever defined as a result of the treaty.

Throughout the decade of the Republic of Texas, the Lipan are mentioned at various places in Texas but often with other Indians. For the most part

the Lipans were principally active on the prairies west and southwest of the outer fringes of the advancing white settlement. Other Indians operating in the general area were the Comanches, the Mescaleros further to the southwest, the Tonkawas to the east and to a lesser extent the Karankawas to the southeast. At this juncture the outer fringe of white settlements followed a line that began roughly in Milam County, moved to the southwest as it passed west of Austin and San Antonio before turning in a more southerly direction and reaching as far south as La Salle County.

From 1828 to 1835 the Lipan had only been reported on the Nueces River near San Antonio. In the early 1840's the Lipans had visited Washington, Texas, on the Brazos River, with the Tonkawas; they had camped at Goliad; they were reported on the Frio River with the Comanches; they were said to be on the Cibolo River, as were the Tonkawas; they were reported to be 50 miles south of San Antonio and later to have traveled from San Antonio to the San Gabriel River above Austin.

6. History of the Mescalero Apaches.

(a) The Spanish Period (1541-1821).

During the Spanish period, the Mescalero Apaches ("Mescal people") lived in the mountain ranges near the Pecos River, but utilized in Indian fashion a sizable area of land between the Rio Grande and Pecos Rivers. Mescalero hunting north and northwest of the Pecos River was limited and indeed curtailed in many instances by the southern movement and extension of the hostile Comanches. Except for raiding activities into the Texas

panhandle and the Big Bend country, and across the Rio Grande River into Mexico, the Mescalero pursued their normal subsistence pattern on lands situated for the most part north of the 32^d parallel in present day New Mexico. The mountains in eastern New Mexico had been their principal residence. However, Mescalero bands had occupied the Guadalupe Mountains below the 32^d parallel and at times resided as far south as the Davis Mountains.

The first recorded Mescalero Apache raid on a Spanish mission within the claimed area occurred in 1675. In 1682 the Mescaleros made their presence known at El Paso when they raided and carried off some 200 horses. Spanish soldiers were sent in pursuit and manage to inflict some losses on the retreating Indians. In 1694 the Mescalero again raided El Paso.

Between 1692 and 1720 there were a number of marked population shifts among the several Indian tribes in northeastern New Mexico and in west Texas. The southern Comanches had appeared on the broad plains east of New Mexico. Moving southwesterly, these Comanches, like a wedge, forced the Lipan Apaches further south and southeast into Texas while at the same time keeping the Mescaleros west of them along the Pecos. In the years that followed, the Comanches continued to raid south and southwestward in a broad area through west Texas to the Big Bend area and across the Rio Grande River into Mexico.

From the 1750's to well into the 1770's the Mescaleros continued to raid along both sides of the Rio Grande from El Paso to the Rio Concho and

south into the Mexican Provinces of Chihuahua and Coahuila. Much of the Mescaleros' presence and activity in the Mexican provinces can be attributed to Comanche pressure from the north. During this period the principal residence of the Mescalero or "Natages" remained the mountains of south-eastern New Mexico and west Texas.

Around 1780 the Spanish authorities in Mexico began to apply military pressure in an effort to rid themselves of the Apache presence. Spanish troops from Sonora, Coahuila, and New Mexico combined their efforts to force the various Apache groups northward and eastward away from the Spanish settlements. The result was a concentration of Apaches in the mountains and ranges of Southern New Mexico and southwestern Texas. Coupled with the increasing Comanches' pressure from the east, the Mescaleros were gradually being confined to a smaller area.

In the last decade of the Spanish regime, there are many references to the Mescaleros and other Apaches raiding south of the Rio Grande in Nueva Viscaya and Coahuila even though their numbers had been diminished as a result of Comanche warfare and intermittent clashes with Spanish military forces. They continued to dwell in the mountain ranges near and on both sides of the Pecos River while extending their hunting activities on the plains northward as far as the "Comancheria" or Comanche territory.

(b) The Mexican Period (1821-1836).

After the Mexican Revolution in 1821 the meticulous Spanish records ceased. What contemporary documentation there is, however, for the most part maps, shows Mescaleros and their associated bands, ranging from the

Sierra Blancas in New Mexico southward into a triangular area formed by the junctions of the Pecos River and the Rio Grande in Texas.

(c) The Republic of Texas (1836-1845).

There are no reports of record during this period of the Republic of Texas documenting Mescalero Apache presence in Texas. However, reports immediately following the entry of Texas into the Union generally place the Mescaleros in areas where they were pictured during the last decades of the Spanish period and through the Mexican period.

7. Neighboring Tribes in the Claimed Area.

(a) Comanche.

The earliest historical accounts cite the prime territory of the Comanche Indians as situated for the most part north and northeast of both the Lipan and Mescalero Apaches, in and around the headwaters of the Brazos and Colorado Rivers. The Comanche were one of the southern tribes of the Shoshonean stock and a wholly plains oriented tribe. They were excellent horsemen and constantly on the move pursuing the buffalo and other game. Their range was enormous and this ability to cover great distances undoubtedly contributed to exaggerated estimates of their size as a tribe.

In the early 18th century the Comanches brought pressure to bear on the Apache tribes to the south, particularly the Lipans and Mescaleros. The Comanche destruction of the San Saba mission in 1758 was an important factor in initiating Lipan movement further south into the Nueces River region.

Repeated Comanche forays into the southwest carried these Indians across the Rio Grande River into the Mexican provinces of Chihuahua and Coahuila.

For almost two centuries the Comanche continued to raid the Spanish and Mexican settlements around and below the Rio Grande. The conventional routes taken by the Comanche Indians on these raids cut a wide swath through southwest Texas and became known as the "Great Comanche War Trail". Described by J. E. Haley the trail descended from the north in two directions, joining together near the intersection of the 100th Meridian and the Salt Fork of the Brazos River, then running southwest, west of Big Spring, Texas, where it split. The western fork continued southwest through Horsehead Crossing to a point where it parted on either side of the Chisos Mountains. The eastern fork, running south-southeast, passed just west of Fort Concho before continuing in a more southerly direction, passing Los Moras Spring (Fort Clark) and intercepting the Rio Grande near Fort Duncan at Eagle Pass. The Comanche war trail effected a wedge between the Mescalero and Lipan Apaches within the overall claimed area. The record herein does not sustain either Lipan or Mescalero aboriginal title claims to that area encompassed by the Comanche war trail. In reality the Comanche war trail became a vertiable no-man's land, having been utilized over the years by many tribes including friend and foe. From the Comanche war trail Indian raiding activities extended throughout the Pecos and Upper Nueces River region. The trail remained in use until the middle of the 19th century. Comanche activity in southwest Texas throughout the Spanish and Mexican periods of sovereignty greatly influenced the extent of the use of the claimed area by both the Lipan and Mescalero Apaches.

(b) Tonkawas.

The Tonkawas, eastern neighbors of the Lipan Apaches, were a non-Athapaskan group bearing close similarities to the Lipans. The tribe was in reality an amalgamation of smaller independent bands. During most of the Spanish period, their principal habitat lay in central Texas between the middle and upper Trinity rivers and the San Gabriel and Colorado Rivers as far down as the "Camino Real", the San Antonio road to Nacogdoches. However, in 1690 the Spanish had contacted Tonkawas further south in present Lavaca and Victoria counties.

The first real intimate contact between the Tonkawas and the Spanish came about through the establishment of the San Xavier mission in the 1740's, at this time the Tonkawas were allied with the Comanches and anathema to the Apaches. It was also a period when epidemics and Apache warfare took its toll on the Tonkawa population. The San Xavier missions were abandoned in 1756 and moved to the Lipan mission on the San Saba River. Two years later the Tonkawas participated with the Comanches in the destruction of the San Saba Mission. In the years that followed the Tonkawas lost favor with the Spanish, but became more friendly with the Lipan Apaches. Spanish efforts to reconcile differences with the Tonkawas and their allies in the 1770's failed with the murder of the Tonkawa Chief at the La Bahia mission at Goliad.

Tonkawa population estimates during the last decade of the Spanish period range from 150 to 300 warriors and up to 250 families. During this period the Tonkawas ranged along the middle and lower reaches of the Guadalupe, Colorado, and Brazos rivers..

During the Mexican period of sovereignty the settlement of American colonists near the eastern boundary of the claimed area disrupted the Tonkawa way of life as well as that of other tribes in the general area. For the next three decades the Tonkawas, Lipans, and other tribes found themselves more restricted in ranging over their traditional hunting lands. By the late 1820's the Tonkawas, who were now allied with a part of the Lipans, had moved into the more settled areas south of the San Antonio Road. The presence of these Indians proved to be continuous source of aggravation between them and the white settlers.

When the Republic of Texas came into being, efforts were undertaken to deal with the Tonkawas. A peace treaty was concluded in 1838 with the Tonkawas and an agent was assigned to the tribe, whose prime responsibility in the ensuing years was to keep the Tonkawas away from the expanding white settlements. By 1850 the Tonkawa population was estimated to be 650. As a result of further incidents between the Indians and white settlers, Governor Pease of Texas, 1855, caused the Tonkawas, Caddo and other smaller tribes to be removed to the new Brazos River reservation in present Young County. This proved to be only a temporary arrangement and in 1859, Agent Neighbors began removing the Texas tribes across the Red River into Indian Territory. The Tonkawas were settled on the Wichita Reservation near Fort Cobb on the north side of the Washita River.

In 1862, disaster struck the Tonkawas. A combined force of Shawnees, Delawares, Kickapoos, Caddos, Comanches and Kiowas attacked the Tonkawas

encampment and massacred almost half the tribe. The remainder of the tribe drifted southward seeking protection near the military establishment at Fort Belknap, but soon moved to Fort Griffin on the Clear Fork of the Brazos River. In 1884 all the Tonkawas, about 92 in number, including a few Lipan were removed to Oklahoma and assigned to the Oakland Agency near Ponca, Oklahoma. In 1908 they numbered 48, among them a few impoverished Lipans. In 1927, a handful of Tonkawas were reported living in Mexico near Sabinas in northern Coahuila.

There is no evidence of record indicating that the Tonkawas were the successors in interest to the aboriginal Lipan Apache Tribe.

(c) Karankawas.

The name "Karankawas" was originally given to a small tribe near Matogorda, Texas, on the Gulf of Mexico. However, it soon was applied to other related bands. La Salle made the first positive contact with the Karankawas when he built Ft. St. Louis at Matogorda Bay. In 1687 the Karankawas massacred the residents of Ft. St. Louis. In the early 1700's the Karankawas were living on St. Louis or St. Bernards' Bay. Thereafter, the Karankawas were reported further south along the coast toward Corpus Christi. In 1793, Karankawas were reported at the Refugio mission that had been established two years earlier on the Mission River which empties into Aransas Bay. In 1796 the Karankawas were reported near or contiguous to Lipans in the lower Rio Grande Area.

The Karankawas are usually identified with the offshore island along the lower gulf coast. In the 1820's, Karankawas were reported in the San Saba area along with the Comanches, Lipans, and other Apaches, presumably,

Mescaleros. Following Austin's settlement in 1823 on the Brazo's River, there were frequent clashes between the Karankawas and the white settlers, the end result being that the tribe lost half its membership with the remainder fleeing to the La Bahía presidio at Goliad on the San Antonio River. Thereafter, through disease and other calamities, the Karankawas were greatly reduced in number. In 1840, there were 100 Karankawas living at Lavaca Bay. Another 10 or 12 families were reported on Aransas Bay and the Nueces River between 1839 and 1851. In 1843 one band of Karankawas settled offshore on Padre Island, the remainder emigrated to Mexico below the mouth of the Rio Grande River at Tamaulipas.

There is no evidentiary support to plaintiff's claims of Lipan aboriginal ownership of the Corpus Christi area of the southeastern portion of the claimed area or that they supplanted the Karankawa after 1843.

(d) The Tribes of the Rio Grande - El Paso Region.

The Tigua and Piro Indians were the original people who inhabited the pueblos in the upper Rio Grande valley during the early 17th century. The Tiguas lived in several villages north and south of present day Albuquerque, and the Piros were located south of the Tiguas as far as San Marcial, New Mexico. Piro and Tigua pueblos were visited by Coronado in 1540 and later by other Spanish travelers and officials who have described their habitat and culture.

In 1598, Spain asserted its sovereignty over the province of New Mexico and all its inhabitants. In the 17th and 18th centuries, the Spanish colonized the Rio Grande - El Paso region and established many

missions among the Indians. In 1629 the first mission among the Piro Indians was established at Senecu, which was located west of the Rio Grande River about 13 miles below Socorro, New Mexico. However, the Senecu pueblo was destroyed by Apache Indians in 1675 and never reestablished. At this time there were approximately 2800 Spanish inhabitants and 16,000 Christianized Indians living in the region from Santa Fe to the region of the Rio Abajo. In 1680, the pueblos, including many of the Tigua villages, revolted against Spanish authority and forced a retreat of the general populus from Santa Fe to El Paso. The Spanish settlers were joined in their exodus by the Piro Indians from Socorro, Sevilleta and Alamillo. In the following year, when the Spanish attempted a reconquest of the province of New Mexico, they found all of the Tigua villages abandoned except Isleta where 500 Indians were taken. The captives were then brought to the Paso del Norte (El Paso) area. The Tigua Indians were later resettled at several locations including Ysleta del Sur in Texas and Senecu del Sur in Chihuahua, Mexico. The Piro Indians from Senecu and Socorro were resettled at Socorro del Sur, located south of El Paso on both sides of the Rio Grande, and at Senecu del Sur.

The pueblo at Ysleta had been established in 1680 as a refuge for Spaniards and friendly Indians. In 1751, Spain granted the land of the Ysleta Pueblo to its inhabitants as communal property. In 1825 the Mexican State of Chihuahua confirmed this grant. Later, in 1854, the State of Texas confirmed the Ysleta grant and, at the same time, granted the inhabitants of the town additional land to compensate for the loss of land

resulting from a change in the course of the Rio Grande River. In 1968, the United States recognized the Tigua Indians as a tribe and transferred federal responsibility for the Tigua Indians to the State of Texas.

The Mansos and Suma Indian Tribes were among a number of Indian groups that had occupied the Rio Grande valley region before the arrival of the Spaniards. The Mansos were semi-sedentary, their culture similar to that of the puebloans, although their houses were built of weed and wood. The traditional lands of the Mansos lay north of El Paso on both sides of the Rio Grande, but they were also found in the El Paso region where a Spanish missionary had established a settlement for them in 1659. During the subsequent years, persons of Mansos descent became intermixed with the Tigua and Piro Indians. For the most part the Mansos disappeared from the historical scene by 1750 having been assimilated into the greater Mexican population.

The Suma Indians were seminomadic and originally located south of El Paso along the eastern fringe of the Rio Grande and westward as far as Casa Grande in Chihuahua, Mexico. Other tribes, such as the Julimes, Cholmes and the aforementioned Mansos also inhabited parts of this general area as did some Apache Indian groups, such as the Janos and Jcomes, who are believed to have had a linguistic and ethnic affinity with the Mansos and Suma Indians. The Suma Indians were also involved in the upheaval against the Spanish in 1684, but were defeated and finally upon their defeat, were settled in several locations around El Paso. In 1744, the tribe comprised 50 families; in 1765 only 21 families remained, the decrease in population

being attributed to smallpox. By 1897, there was only one known Suma Indian living at Senecu, Mexico, the tribe having become extinct.

(e) Coahuiltecons.

This is a collective name given by the Spanish missionaries in the early part of the 17th century to some seventy odd tribes and subtribes that lived along the lower San Antonio, Nueces, and Rio Grande Rivers. By the latter part of the 18th century the ravages of disease, Lipan pressure, and their dependency upon mission life had practically destroyed their tribal existence. Many of the Coahuiltecons retreated into Mexico. Their virtual disappearance accounts for the little known contact between them and the incoming white settlers.

8. Land Policies.

(a) The Land Policies of Spain.

The colonial land and Indian policies of Spain were derived from the laws and decrees of the Crown. These laws of Spain were made applicable in the New World and were incorporated in a collection of laws and regulations known as the Recopilation de Leyes de los Reynos de las Indias.

The rights of conquest resulting from a just war, established in the theories of the theologians the rights of ownership corresponding to the first occupancy of vacant lands; and the rights acquired by the King of Spain in accordance with the Papal Bull, Inter Caetera, or Noverint Universi, were the legal and religious foundations of the Spanish Crown's

ownership of "the lands, fields, mountains, pastures, rivers, and water" of the West Indies.

By an "Act of Possession," celebrated on April 30, 1598, at the pass of the Rio Grande near modern El Paso, the governor took possession of the lands in New Mexico and Texas in the name of the Crown.

The Recopilacion de Leyes de las Indias and the royal ordinances and cédulas issued thereafter were the embodiment of the Spanish law prevailing in America until Spain's sovereignty ended. Under these laws, land concessions, which emanated directly from the Crown, were granted in the King's name by specially delegated officers.

Spanish law also made provision for Indian ownership of land through specific grants to Indian towns, Indian caciques or chiefs, and to some Indian subjects or citizens. Those lands not specifically granted were declared vacant lands, terrenos baldios, belonging to the Crown and were granted to anyone, provided that such grants were not prejudicial to the Indians. In the absence of any specific grant of land to third parties, or other definitive act, the Spanish land policy applicable to territories on the North American continent did not abrogate preexisting aboriginal rights of Indians.

(b) Land Policies During the Mexican Period.

The Government of Mexico assumed ownership of all lands formerly held by the Spanish Crown. Grants of land made by Spain were recognized by Mexico. No change in private property rights or the aboriginal rights of Indians occurred as a result of the change in sovereignty from

been issued, and an 1825 census of the colony revealed a total of 1800 persons, including some 443 slaves. In 1825 Austin received a further grant from Mexico authorizing the settlement of an additional 500 families between the Brazos and Colorado Rivers north of the original grant. The steady growth of Austin's colonies are dramatically shown by the increase in population from 2,021 in March 1828, to 4,228 in June 1831, and to 5,660 in June of 1832. By the close of 1833, Austin had issued land titles to a total of 1,065 families.

Many other empresario grants were issued pursuant to the 1825 colonization law. Some were successful, others totally failed. Many of these grants lay well within the eastern boundaries of the Lipan claimed area, encompassing San Antonio, and reaching south along the Nueces River. In 1831 there were 161 families settled south of Austin, Texas, near Gonzales, At this time the population of Austin's colony and the combined empresario grants was 9,000 persons. In 1833 the overall population of areas within and without the Lipan claimed area was 20,500 broken down as follows:

- (1) Municipality of Austin, including the towns of Bastrop, Matagorda, Harrisburg, and the settlements upon the Colorado, and San Jacinto Rivers, and the new town of Tenoxtitlas, 12,600.
- (2) Municipality of Bexar, including the missions of San Jose, San Juan, Conception, and ranches on the Bexar River, 4,000.
- (3) Municipality of Goliad, including the Towns of San Patricio and Guadalupe Victoria, 2,300.

(4) Municipality of Gonzales, 1,600.

Spanish and Mexican land grants are the bases of title to 26,280,000 acres of Texas land, amounting to approximately one-seventh of the state's land area, including the entire extent of the Lower Rio Grande Valley and the City of San Antonio as well as many other urban communities. Since the Spanish royal grants are estimated at 10 million acres, the remaining 16,280,000 acres of grants were Mexican land grants.

(c) Land Policies During the Period of the Republic of Texas.

Spanish and Mexican laws governing grants, colonization of land, minerals, mines, water and other matters pertaining to property were retained by the Republic of Texas.

The Government of the Republic of Texas, by an Act of January 4, 1841, opened all the land in its territory to grants to individuals and empresarios. Despite the uncertainties of the times, and the constant threat of further hostilities with Mexico, the population of Texas grew steadily, aided by a sizable migration from abroad. Over 5,000 German immigrants settled near the villages of New Braunfels and Fredericksburg. Other settlers came from Holland and France, with some 2,134 being resettled on a grant between the Nueces and Rio Grande rivers.

During the period of the Republic of Texas approximately 26 million acres of Texas land were granted to individuals. This was in addition to the 26,280,000 acres granted during the Spanish and Mexican periods. Thus, a total of 52 million acres of land had been granted to individuals by Spain, Mexico and the Republic of Texas prior to 1846. By the time Texas entered the Union, the total population was 142,000 persons.

9. The American Period -- Texas Attains Statehood -- Treaty of May 15, 1846 (9 Stat. 844).

Texas attained statehood pursuant to the Joint Resolution of Congress of December 29, 1845 (9 Stat. 108), and installed a state government on February 19, 1846. An annexation treaty had been previously entered into on April 12, 1844, between the Republic of Texas and the United States, but it failed to obtain the necessary two-thirds vote of approval in the United States Senate and was rejected on June 6, 1844. The proponents of annexation then achieved their objective by the Joint Resolution which required only a simple majority of both branches of Congress. Under the terms of its admission, Texas, which entered the Union as the twenty-eighth state, without a preliminary period as a territory, retained all the vacant and unappropriated lands lying within its limits and was responsible for the debts it had incurred as a republic.

On April 29, 1846, the Texas Legislature approved a joint resolution which states:

". . . we recognize no title in the Indian Tribes, resident within the limits of the State to any portion of the soil thereof, and that we recognize no right in the government of the United States to make any treaty of limits with the said Indian tribes, without the consent of the government of this State."

Shortly thereafter, on May 12, 1846, the legislature passed an act establishing a General Land Office to superintend the disposition of the Texas public domain.

On May 15, 1846, the United States concluded a treaty with several Texas Indian Tribes, including the Lipan, 9 Stat. 844. Said treaty was

amended and ratified by the United States Senate on February 15, 1847, and proclaimed by President Polk on March 8, 1847. P. M. Butler and M. G. Lewis were the treaty commissioners for the United States. Of major concern to the Government was the need to establish and maintain friendly relations with the several Indian tribes, and to prevent the Indians from allying themselves with Mexico. Of major concern to the Indian tribes was the need of a fixed boundary line between their hunting grounds and the steadily advancing white settlements. While no boundary line was delineated under the 1846 Treaty, the matter was obviously under consideration but because of the confusing and anomalous position of Texas and the United States with regard to their respective jurisdictions over Indians and territory, the matter of actual boundary line was deferred for future consideration.

Under Article I of the 1846 Treaty it was provided that the Indians ". . . do hereby acknowledge themselves to be under the protection of the United States and no other power, state or sovereignty whatever". Under Article II of the treaty the Indians agreed "that the United States shall have the sole and exclusive right of regulating trade and intercourse with them. . . ." In addition it was provided under Article IX that "For the protection of said Indians and for the purpose of carrying out the stipulation of this treaty more effectually, the President shall, at his discretion, locate upon their borders, trading houses, agencies and posts." Because of this latter provision the treaty commissioners were of the view that they had indirectly accomplished the same result as if a definite line had been drawn.

10. Expansion of White Settlement in Texas -- Increased Hostility From Texas Indians.

Soon after the conclusion of the 1846 Treaty, surveyors, speculators, and squatters began to encroach upon lands of the Indians. In 1847 Agent Robert Neighbors, who was visiting the Comanches, reported that these intrusions were causing great excitement among the many tribes, which could only lead to serious difficulties unless the Government took firm measures to prevent further intrusions. The fact that the State of Texas did not acknowledge any Indian rights to Texas lands only encouraged further white intrusions into the Indian country. Neighbors reported a short time later that another white party had been attacked by Lipans on the Laredo road some fifty miles below San Antonio. These Lipans were living on the Rio Grande and Nueces rivers during the summer of 1847, while the Comanches were reported occupying lands in the San Saba River area northwest of San Antonio within the Lipan claimed area.

The brief war with Mexico (1846-1848) diverted the bulk of federal troops in Texas to the Mexican border and left the protection of the frontier settlements for the most part to local and state authorities. The frequent and indiscriminate attacks of local vigilante groups upon Indians only agitated an already alarming situation. The 1848 Treaty of Guadalupe Hidalgo officially closing the Mexican War added to the burden of the federal military and civilian officials. Under its provisions the United States was obligated to protect the Mexican border against Indian incursions from the north. More federal troops were to be deployed along the Rio Grande.

In 1849-50, the Indian country lay northwest, and west, and southwest of a line of military posts and camps fronting the settlements of Austin, Fredericksburg and San Antonio, well within the Lipan claimed area. The Texas census of 1850 shows the following number of non-Indian inhabitants living in some 22 organized counties within the overall area claimed by the Lipan and Mescalero plaintiffs.

1850 Texas Census

<u>County & Year Organized</u>	<u>Source of County</u>	<u>Number of Inhabitants (1)</u>
Bastrop, 1836	Old Mexican Municipality	3,099
Bexar, 1835	Old Mexican Municipality	6,052
Caldwell, 1848	Gonzales	1,329
Calhoun, 1846	Victoria	1,110
Cameron, 1848	Nueces, 1846)	
Starr, 1848	Nueces)	
Webb, 1848	Bexar)	8,541
Comal, 1846	Bexar, Gonzales	1,723
De Witt, 1846	Goliad, Gonzales	1,716
Fayette, 1837	Bastrop, Colorado	3,756
Goliad, 1836	Old Mexican Municipality	648
Gonzales, 1836	Old Mexican Municipality	1,492
Guadalupe, 1846	Bexar, Gonzales	1,511
Hays, 1848	Travis, 1840	387
Jackson, 1836	Old Mexican Municipality	996
Lavaca, 1846	Colorado, Victoria, Jackson	1,571
Medina, 1848	Bexar	909
Nueces, 1846	San Patricio	698
Refugio, 1836	Old Mexican Municipality	288
San Patricio, 1836	Old Mexican Municipality	200
Travis, 1840	Bastrop	3,138
Williamson, 1848	Milam	<u>1,568</u>
	Total	40,732

The increasing pressure and activity of new white settlements along the expanding Texas frontier caused further depletion of the diminishing supply of game--the chief means of Indian livelihood. As a consequence the Indian tribes became more widely dispersed, being forced to wander over

larger areas in smaller groups in search of food. Estimates of Lipan population around 1850 ranged from 250 to 500, but as noted by Indian Agent Rollins, the Lipans had but few children and a disproportionate number of aged Indians. Unless their living conditions were drastically changed for the better, the Lipans, and other similarly situated Indians, faced ultimate tribal extinction within the near future. At this time a larger portion of Lipans were reported west of Pecos River in the Mescalero claimed area.

11. 1850-1859 -- Exploration in West Texas -- Influence of New Tribes -- The Reservation Period -- Lipans Leave Texas.

Relatively little contact had been made with the Mescalero Apaches by either white settlers or the military prior to 1850. The lands west of the Pecos had not been explored, and the Mescaleros, coming down from their New Mexico haunts, the Guadalupe Mountains as well as their rancherias below the 32d parallel in west Texas, were able to range freely over great distances west and south, to and below the Rio Grande River into old Mexico. At times they were reported near El Paso, usually in a destitute and starving condition and asking for provisions. Their chief competitors in the trans-Pecos area where the Comanches, who were frequently joined by warriors of other tribes as well as renegade whites and Mexicans in raiding the small settlements on both sides of the Rio Grande.

Texas was now entering a period of rapid expansion. The discovery of gold in California in 1849 brought a rush of gold seekers across west Texas who demanded protection of the military from marauding Indians. Apart from protecting the white settlements further east, the Army was fully occupied in patrolling the extensive international border under obligations imposed by

the 1848 Treaty of Guadalupe Hidalgo to restrain the Indians above the Rio Grande River from making incursions into Mexico.

With the need for newer and safer wagon routes across west Texas being paramount, Agent Robert Neighbors in 1849 initiated an exploration that began from Austin and blazed a new wagon trail to El Paso. This new route ran north of the Davis Mountains and close to the New Mexico boundary well within the Mescalero claimed area. Another exploring party was led by Lieutenants Whiting and Smith, army engineers. They started from San Antonio, passed through Fredericksburg and made their way through the Davis Mountains, pioneering a route that, as distinguished from the Neighbors route, was later known as the "lower road."

By 1850 the Federal Government sponsored nine more expeditions into the less well-known parts of Texas; some of which had the purpose of shortening the two initial routes or of finding more suitable alternatives.

In the spring of 1850 there was a notable influx of alien Indian tribes into Texas of whom many were to take up permanent residence. Most notable were parties of Delawares, Shawnees, and Kickapoos, who had migrated from the Indian territories. Other tribes who chose to make lengthy sojourns into Texas before returning home included the Seminoles, Creeks, Cherokees, Shawnees and Osages. These outsiders, when added to the Texas Indians, only compounded the Indian problem and brought more pressure to bear from the Army in maintaining peace and order near the white settlements.

Between 1850 and 1854, the imaginary line dividing the fringe of Texas white settlement and the Indian country had steadily moved westward, and was now marked by a line of military posts and camps beginning with Ft. Belknap, in Young County, and then followed by Ft. Mason and Ft. Kavette in Menard County, Ft. Chadbourne in Coke County, Ft. Phantom Hill in James County and Ft. Stockton in Pecos County. Of greater moment to the Mescaleros was the establishment of Ft. Davis on Limpia Creek in the Davis Mountains. While New Mexico remained the principal habitat of the Mescalero Apaches, the Davis Mountains, with the exception of a few temporary camps in the Big Bend region represented the extent of Mescalero permanent use and occupancy of lands in Texas.

Those Mescalero bands in the Big Bend Region often found themselves in company with Lipan Apaches, Comanches, and other Indians. With equal facility these Indians would remove themselves back and forth across the Rio Grande River into Mexico.

There being no ready made solution to the aggravating Indian problem, serious efforts were begun by responsible state and federal officials to establish reservations for the Texas Indians. On February 6, 1854, the Texas legislature passed a law authorizing the United States to select and survey twelve leagues of vacant public lands for Indian purposes, not "situated more than twenty miles south or east of the most northern line of military posts, established by the government of the United States, and extending from Red River to the Pecos River." (U.S.D.I., O.I.A. - General Files, Texas 1855.) The Indian reserves to be selected were to be occupied

by those Indians "as belong within the limits of Texas"; the United States was to exercise control and jurisdiction over the Indians on the reserves, and the reserved land was to revert to the State of Texas whenever they ceased being used for Indian purposes.

Two reserves were ultimately selected, the 37,152 acre Brazos reserve, located on the main fork of the Brazos River some fifteen miles south of Ft. Belknap, and the 18,576 acre Comanche reserve, located on the Clear Fork of the Brazos River, at Camp Cooper, forty-five miles west of the Brazos Agency. By March 1855, the more civilized Texas tribes, Caddoes, Wacoes, Tawakonies, Anadarkoes, Tonkawas, Keechies, and a few Delawares, began to colonize the Brazos Reserve. Within the next three years over a thousand Indians were located on the Brazos Reserve. In May of 1855, members of the Southern Comanche Tribe began to colonize the Comanche Reserve. During the next three years the population of the Comanche Reserve never exceeded 557 persons.

It had been contemplated that a reserve would be set aside for the benefit of the Lipans and those Mescaleros in west Texas. However, Agent Robert Neighbors in an 1854 report stated that the Lipan had been living west of the Pecos (within the Mescalero claimed area), and not knowing of their desires, a tentative selection of 18,576 acres land on the Brazos River had been made for the Lipans and those Mescaleros in west Texas. According to Neighbors the Mescalero Apaches were unwilling to move east of the Pecos River. This contemplated tract was thereafter added to the Brazos reserve.

In August of 1853, Agent Neighbors had reported that the Lipans, numbering 400 persons, were cultivating corn on the Nueces River in the southern part of the Lipan claimed area. In April of 1854 Neighbors reported that, since January of 1854, the Lipans who had resided on the Pecos River, had now crossed the Rio Grande River at the solicitation of the Mexican authorities and were now living in the neighborhood of San Fernando. On May 3, 1854, Neighbors wrote that the Lipan Chief, John Castro, reported to him that his people had received permission to commence planting corn on the Rio Blanco 5 miles from the settlements. Because of disruptions along the border, the Lipans apparently abandoned their cornfields in Mexico and recrossed the Rio Grande and camped with some Mescaleros near Ft. Clark. In November of 1854 Agent Howard reported that the Lipans had all gone to Mexico. Mexican records confirm the presence of the Lipans in Coahuila, Mexico in 1854. In 1855 some 88 Lipans were reported in Mexico. In October of 1855, Agent Neighbors reported that the Lipans were living near Piedra Negras, Mexico, under the auspices of the Mexican authorities.

12. Military Operations Against the Mescalero Apaches--Texas Indians Are Removed to the Indian Country.

By 1854 some Mescaleros were reported to be settled with the Lipans below the Rio Grande River in Mexico. As indicated earlier one of the principal habitats of Mescalero Apaches had been the Guadalupe Mountains in southern New Mexico and west Texas. From this place as well as from several sites in the Davis Mountains further to the south, the Mescaleros had been menacing the El Paso area and raiding along the Rio Grande River. It was estimated that the Mescalero Apaches numbered between 350 and 750

persons. The Mescalero band living in the Guadalupe Mountains was led by Chief Marcos. These Mescaleros as distinguished from other bands living in New Mexico were considered renegades.

In 1854 the military instituted operations designed to rid the El Paso area of Mescaleros with changes being made in the federal line of defense. Camp Lancaster on the San Antonio and El Paso road just east of the Pecos River was established, as well as Fort Bliss near El Paso. For the next several years the Mescaleros in Texas operated from their camps and rancherias in the Guadalupe, Sacramento, and Davis Mountains. Still other Mescaleros remained below the Rio Grande River with the Lipans in Old Mexico where they periodically joined other renegade Indians in harassing the small settlements on both sides of the river.

In the late 1850's the relationship between the white settlers and the Texas Indians on the newly established reservations began to deteriorate. Indian depredations along the entire Texas frontier and the Rio Grande River were increasing. The chief depredators were not the reservation Indians but Northern Comanches and allied bands, as well as the renegade Indians in Mexico. The blame, however, fell upon the reservation Indians. Frontier settlements sent a flood of petitions to the state legislature complaining of Indian attacks. With the settlements now boiling with anger and hatred, the formation of white vigilante groups posed a serious threat to the safety of the reservation Indians. Federal authorities faced an almost impossible situation. The need to remove the Indians from Texas for their own protection was the only solution. In August of 1859 Agent Robert Neighbors, with the approval of the Department of the Interior, and

escorted by a military force, led the reservation Indians out of Texas and across the Red River into the Indian country. The reserve Indians had now departed, but the Northern Comanches, and other Indians along the frontier continued the raiding and depredating.

13. The Civil War Period (1861-1865) - Lipan Remain in Mexico -
Eventual Removal of Lipans to Reservations.

As the Civil War began, over 130,000 non-Indians were living in the areas in Texas claimed by the plaintiff tribes--the bulk of the population being situated east of the Pecos River. The war itself had an enormous effect on the stability of the Texas frontier settlements. With Texas having seceded from the Union in February of 1861, many of the federal military posts were either abandoned or turned over to the Confederate forces. Indian loyalties vacillated between the opposing forces. Effective military protection along the entire Texas frontier had collapsed, a fact that had not escaped the attention of the border Indians, the renegades and other lawless elements. Indian raids became more frequent and bolder. Organized bands of outlaws and cattle thieves contributed to the turmoil and disruption throughout the frontier settlements.

From sanctuaries in the Indian Territory the Kiowas and Comanches swept down along the northern frontier with such violence that whole counties were abandoned with the settlers withdrawing to the interior. In the late 1860's the worst depredations were occurring along the Rio Grande River. From their camps in Mexico, bands of Lipans, renegade Mescaleros, Kickapoos, Seminoles and others devastated the country along the Rio Grande between Eagle Pass and Laredo. For almost ten years following the conclusion

of the Civil War, these river settlements suffered from the constant raiding of the Lipans and the renegade Indians living in Mexico.

The constant raiding along the Rio Grande River fomented several border incidents involving United States troops, who, in hot pursuit frequently had chased the retreating Indians well into Mexico. One such incident in 1873, involving several companies of federal troops from Ft. Clark in pursuit of a band of Lipan and Kickapoo raiders to their encampment near Remolino, Mexico, prompted a joint Mexican-American effort to remove the renegade Indians from the province of Coahuila and relocate them on a reservation north of the Red River. Some Kickapoos, all of the Pottawatomies, and few other Indians were subsequently removed. The Lipans, however, steadfastly refused all overtures to relocate.

With the exception of those Lipans who had settled in Mexico around 1854, the whereabouts of other members of the tribe following the end of the Civil War remained rather obscure. It is apparent that the tribe was now fragmented and for all intents and purposes had for sometime ceased to be a cohesive tribal entity. By 1865 some Lipans had already moved to the Indian Territory where they finally joined the Kiowa Apaches at Ft. Sill. Other Lipans were living near several military posts where they continued to serve the Army as scouts. As late as the 1870's other Lipans were still roaming west of the Pecos River where they had joined the Mescaleros in New Mexico. In 1874 a handful of Lipans joined up with a Tonkawa group and were removed to the Indian Territory where eventually

they settled at the Oakland Agency in northern Oklahoma. The remnants of those Lipan who had fled to Mexico in 1854 were eventually rounded up by the United States Government in 1905 and relocated on the Mescalero Reservation in New Mexico.

14. The Mescaleros at Bosque Redondo - Executive Order of May 29, 1873

In 1862 a vigorous military campaign was instituted against the Mescaleros in New Mexico, the culmination of which caused the Mescaleros to sue for peace and be settled on the reservation at Ft. Sumner on the Bosque Redondo in New Mexico. By early 1863 approximately 400 Mescaleros had been assembled at Ft. Sumner. Those Mescaleros who had escaped capture either remained in their mountain retreats or fled to Mexico. Operating in small bands these hunted Mescaleros raided along both sides of the Rio Grande River and into Mexico.

By the end of the Civil War the Indian problem in New Mexico was far from settled. Kit Carson's successful campaign against the Navajos caused thousands of these Indians to be rounded up and sent to the Ft. Sumner reservation. The large influx of Navajos at Bosque Redondo only inflamed old animosities between the Navajos and the then resident Mescaleros. Finding themselves greatly outnumbered by their ancient foes, the Mescaleros deserted the reservation in large numbers, many returning to their old stamping grounds in the Sierra Blanco, Organ, Sacramento and Guadalupe Mountains. From these mountain retreats the Mescaleros renewed and intensified raiding activities throughout southern New Mexico, west Texas, and along both sides of the Rio Grande River. For several years, extending

into the 1870's, army personnel stationed at Ft. Bliss near El Paso and at Ft. Davis, as well as from other posts in New Mexico and Texas, conducted many punitive expeditions against the raiding Mescaleros, frequently attacking the Mescaleros in the Guadalupe and Davis Mountains within the claimed area.

Efforts to return the Mescaleros to a reservation life reached a climax on May 23, 1873, when President Grant issued an Executive order setting apart as a permanent home for the Mescalero Apaches, a sizable area in New Mexico south of Ft. Stanton along the slopes of the White and Sacramento Mountains. Subsequent Executive orders enlarged this original area. During this period population estimates for the Mescalero Apaches ranged anywhere from 500 to 1300.

15. Expert Witnesses.

The plaintiff offered the testimony of two expert witnesses, Dr. Verne F. Ray, an anthropologist with broad experience in teaching and as a private anthropology consultant, and Dr. Morris E. Opler, who is a professor in anthropology at the University of Oklahoma.

Dr. Ray supported his testimony with an ethnohistorical survey of the documents relating to the Lipan and Mescalero Indians in Texas wherein he traces their history through the Spanish, Mexican, Texas and United States periods of sovereignty. Dr. Ray's conclusions as to the land aboriginally occupied by the Lipan and Mescalero Indians are based upon the historical mention of the tribes he has found, wherein he cites the different locations

and dates that bands, raiding parties or encampments were seen by military expeditions or other persons traveling through the claimed area. From such evidence fixing the locations of the tribes at the times mentioned, he has determined the area of alleged exclusive use.

Dr. Opler's testimony was supported by a report consisting of a study of the cultural and subsistence patterns, and the sociopolitical practices of the Lipan and Mescalero Indians. This study, in addition, includes an ethnographic description of the neighboring tribes for the purpose of establishing that such tribes did not intrude upon the exclusive occupancy of either the Lipans or Mescaleros.

The Commission found the detailed reports submitted by the above experts to be informative. However, the Commission has rejected as conjectural, speculative, and not supported by the preponderance of the evidence the conclusions of plaintiffs' expert witnesses as to the extent of Lipan and Mescalero aboriginal ownership of the lands claimed herein for the time periods in question. The Commission also rejects the plaintiff's experts' conclusions as of the date of taking.

The defendant's expert witness was Dr. Kenneth F. Neighbours, a historian who has written extensively about the history of Texas and about Major Robert Neighbors, the famous Indian agent of the Texas tribes, who served in that capacity under both the Republic of Texas and the United States governments. His report, an ethnohistory of the Lipan and Mescalero Indians, and his testimony related chiefly to the land and Indian policies of the respective sovereignties that ruled Texas through the 19th century. He

concluded that, as a result of such policies, the Indians of Texas, and particularly the Lipan and Mescalero Indians, did not have aboriginal title to any lands within the State of Texas, although at various times these and other Indian tribes had historically been located at different places within the area. The Commission has rejected Dr. Neighbours' legal conclusions relative to Indian title in the State of Texas as contrary to the law of the case.

16. Conclusion.

Based upon the foregoing findings of fact and all the evidence of record, the Commission has concluded as follows:

(a) From time immemorial, through the periods of Spanish and Mexican sovereignty, and the Republic of Texas, and, until November 1, 1856, when, as a result of the actions of the United States army in carrying out federal policy, it was compelled to vacate its ancestral home, the aboriginal Lipan Apache Tribe held Indian title to the following described land situated within that area in Texas claimed by principal plaintiff herein:

Beginning at that point on the Rio Grande River which is the northwest corner of Zapata County; thence easterly along the common boundary of Zapata and Webb counties to the southeast corner of Webb County; thence northeasterly on a line, crossing the Nueces River, to the town of Pawnee in Bee County; thence northwesterly on a line to the northwest corner of Bandera County; thence northwesterly on a line to the northwest corner of Edwards County; thence south along the western boundary of Edwards County and adjoining Kinney County to the southwest corner of Kinney County on the Rio Grande River; thence southeasterly along the east bank of the Rio Grande River to the place of beginning.

(b) From time immemorial, through the periods of Spanish and Mexican sovereignty and until 1873, the Mescalero Apache Tribe maintained, used and occupied exclusively in Indian fashion a large area in south central

New Mexico and west Texas between the Rio Grande River and the Pecos River. By virtue of the Executive Order of May 29, 1873, establishing the Mescalero Apache Indian Reservation in New Mexico, the Mescalero Apache Tribe relinquished to the United States without the payment of compensation, Indian title to all lands outside of the reservation. See Mescalero Apache Tribe v. United States, 17 Ind. Cl. Comm. 100 (1966). Accordingly, May 29, 1873, is the effective date of the extinguishment of all Mescalero aboriginal land claims including Mescalero Indian title to the following described area in Texas.

Beginning at the southeast corner of the State of New Mexico; thence south-southwest on a line across the Pecos River to the southeast corner of Reeves County Texas; thence southwest on a line to Ft. Davis in Jeff Davis County; thence northwest on a line to the town of Van Horn in Culberson County; thence northwest on a line to the northeast corner El Paso County, Texas, said corner being on the southern boundary of the State of New Mexico; thence easterly along the southern boundary of the State of New Mexico to the point of beginning.

(c) The evidence of record does not support Lipan and Mescalero aboriginal title claims to lands outside of the areas awarded above.

(d) The Tonkawa Tribe of Indians, second intervenors, herein has failed to prove by the preponderance of the evidence that said tribe is the successor in interest to the aboriginal Lipan Apache Tribe.

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner

Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John I. Vance
John I. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner