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Article Summary: The tragedy of the Ponca Indians led to Nebraska's last significant land acquisition, Boyd County. The story of how the northern boundary of Nebraska was negotiated in the 1880s includes government ineptitude and bad faith, political manipulation, and the total disruption of the Poncas' lives.

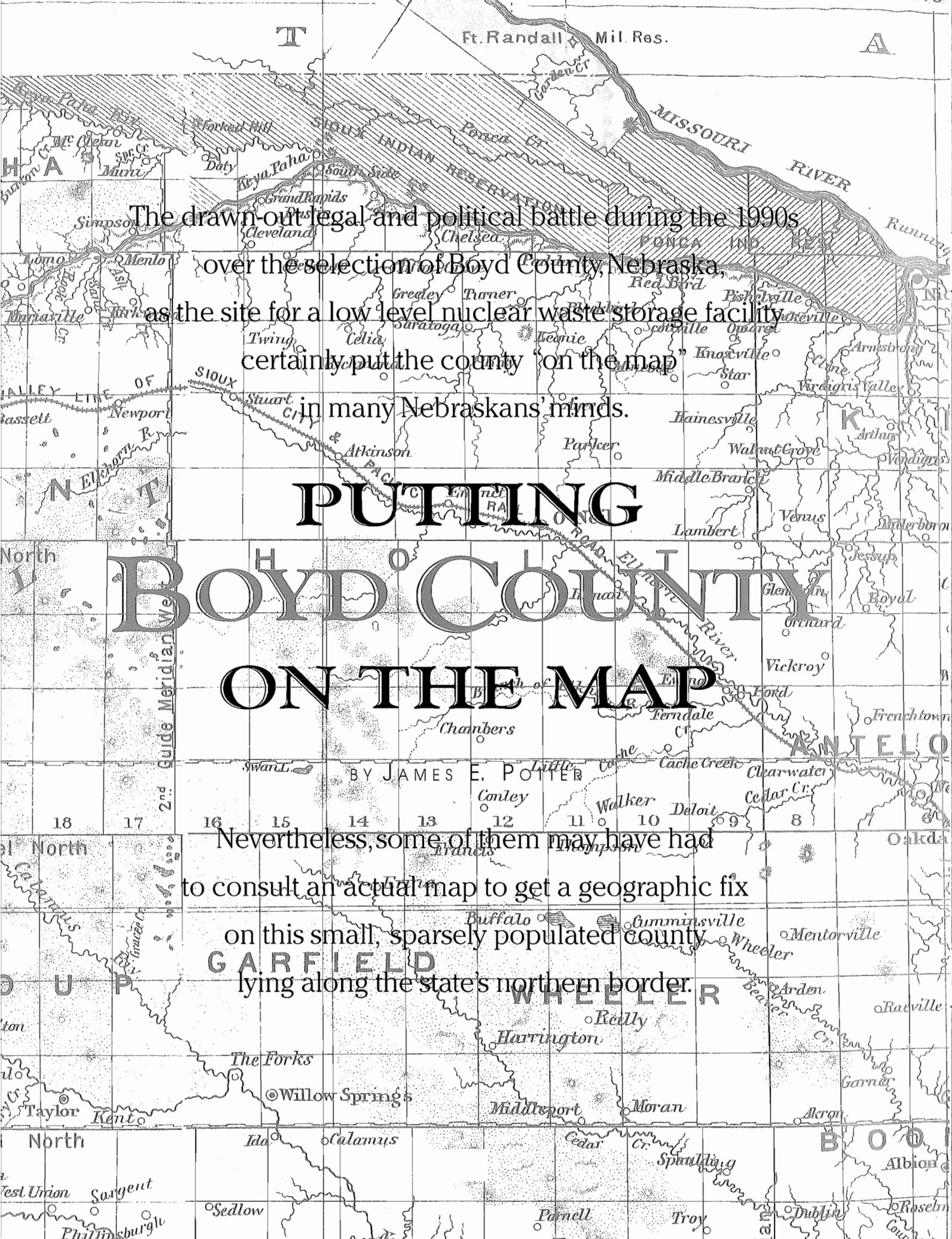
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Photographs / Images: Fig 1: detail from *Official Topographical Map of Nebraska* (Everts and Kirk, 1885); Fig 2: detail from *Johnson's Nebraska and Kansas* (Johnson & Browning); Fig 3: Ponca Reservation, 1858 (Steve Ryan); Fig 4: *Johnson's Nebraska, Dakota, Colorado, & Kansas* (Johnson & Ward); Fig 5: Ponca Reservation, 1865 (Steve Ryan); Fig 6: Standing Bear and his family; Fig 7: Alvin Saunders, US Senator 1877-1883; Fig 8: map showing Boyd, Holt, Knox and Keya Paha Counties' boundary changes during the 1880s and 1890s as well as present boundaries (Steve Ryan)



The drawn-out legal and political battle during the 1990s
over the selection of Boyd County, Nebraska,
as the site for a low level nuclear waste storage facility
certainly put the county "on the map"
in many Nebraskans' minds.

PUTTING BOYD COUNTY ON THE MAP

BY JAMES E. POTTER

Nevertheless, some of them may have had
to consult an actual map to get a geographic fix
on this small, sparsely populated county
lying along the state's northern border.

Adjusting Nebraska's Northern Boundary

A PERSON WHO TRIED TO FIND BOYD COUNTY on a Nebraska map of the 1870s or 1880s, however, would have failed, and not only because the county had not yet been organized. The area occupied by today's Boyd County (and portions of Knox and Keya Paha counties as well) was not part of Nebraska in those days. The tract was in Dakota Territory and made up the south-eastern corner of the Great Sioux Reservation. Maps of that era show a dimple in Nebraska's northern border west of the confluence of the Niobrara and Missouri rivers. There the Keya Paha and Niobrara rivers marked the state line. (Fig. 1).

The Poncas in historic times lived near the confluence of the Niobrara (formerly the L'Eau Qui Court, or Running Water) and Missouri rivers, ranging west and northwest to hunt. They were relatives of the Omahas, speaking a similar language and maintaining a similar village lifestyle. The Poncas had encountered Europeans ascending the Missouri River in the later eighteenth century. In 1804 Lewis and Clark visited their villages during their famous expedition to explore the vast region the United States acquired by the Louisiana Purchase, but the Poncas were away hunting buffalo.¹



Fig. 1 Detail from *Official Topographical Map of Nebraska* (Philadelphia: Everts and Kirk, 1885).

The story of how Boyd County was added to Nebraska, like the story of the waste dump imbroglio, includes elements of government ineptitude and bad faith, political manipulation, and the disruption of people's lives by outside forces, in this case the lives of the Ponca Tribe of Indians. While the sad story of the Poncas and their famous Chief Standing Bear has been frequently told (recently surfacing again when Standing Bear's image became a finalist for the Nebraska quarter), how the Ponca tragedy led to Nebraska's last significant land acquisition is less well known.

Never a large tribe, and traditionally friendly to the whites, the Poncas concluded their first treaty with the U.S. government in 1817, one of the so-called "peace and friendship" treaties after the War of 1812. In 1825 Gen. Henry Atkinson and Indian Agent Benjamin O'Fallon negotiated treaties with many tribes of the Upper Missouri, including the Poncas, by which the tribes acknowledged U.S. supremacy and protection and the government's right to regulate trade.²

The Ponca domain became part of Nebraska Territory when the Kansas-Nebraska Act of 1854

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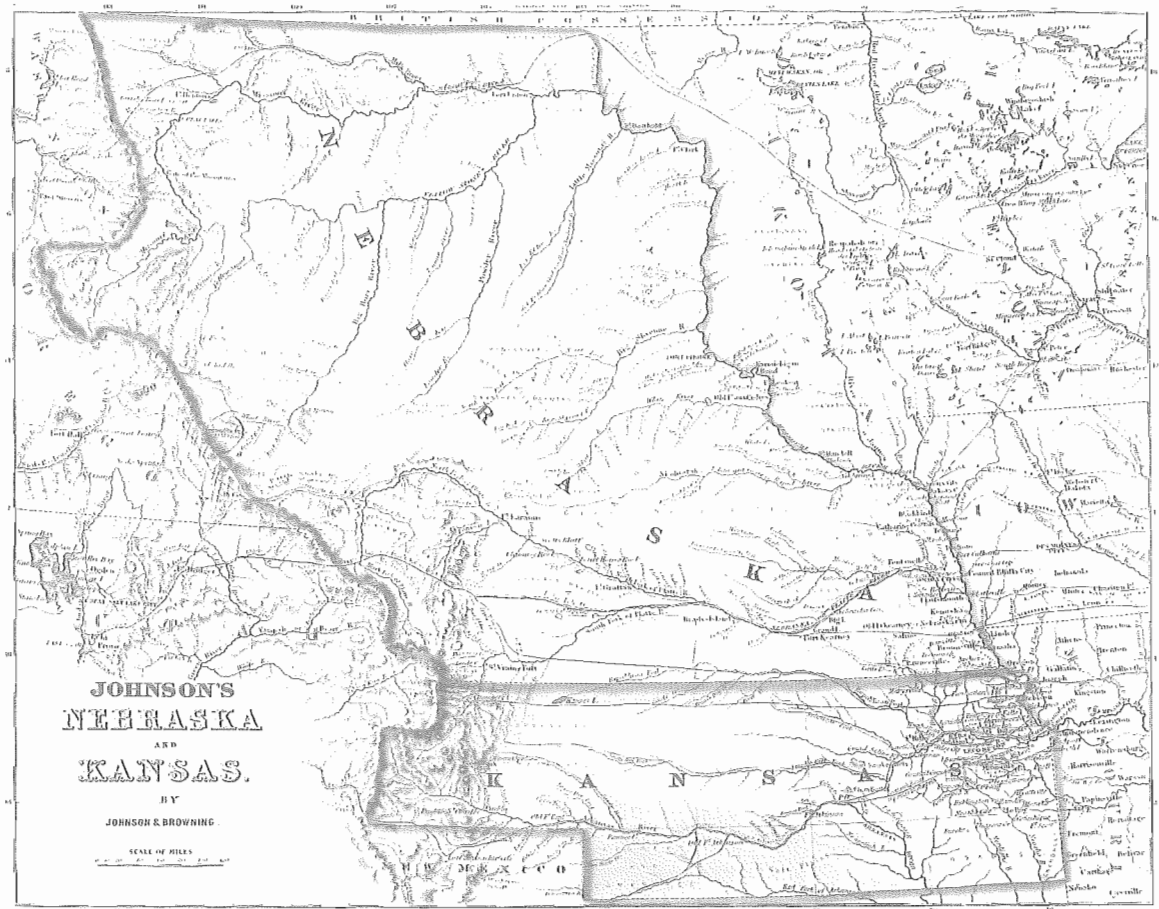


Fig. 2 NSHS-912/xJ63

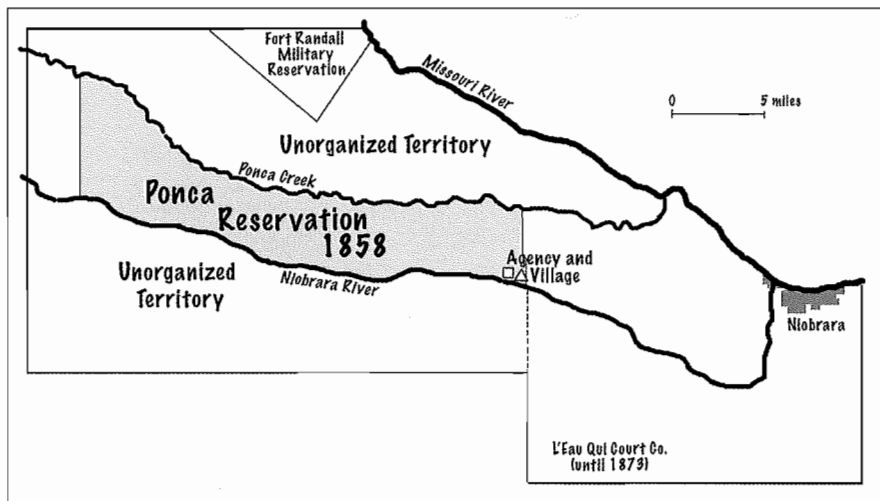


Fig. 3 Ponca Reservation, 1858. Map by Steve Ryan

created that immense political subdivision (Fig. 2). Immediately the U.S. government began negotiations to extinguish Indian title to large tracts in eastern Nebraska Territory that would soon be susceptible to white settlement. Treaties with the Pawnees, Omahas, Oto/Missourias, and Poncas provided for the cession of millions of acres of

Indian land and set aside much smaller reserves for the Indians themselves.³

The treaty establishing the first Ponca Reservation was concluded in Washington, D.C., in March 1858. In return for ceding most of their historic hunting grounds, the Poncas were assigned a reservation located between Ponca Creek and the Niobrara River in today's southern Boyd County (Fig. 3). The government promised to protect the Ponca reservation and "their persons and property thereon." The small Ponca Tribe had been suffering attacks from the more powerful Sioux for decades, both in their villages and on the hunt. In 1859 the Ponca Agency was established.⁴

Beginning in 1861 Congress began to carve new federal territories from the giant Nebraska Territory that originally encompassed some 351,500 square miles, a methodology established with the creation of the territorial system under the Northwest Ordinance of 1787. The Northwest Territory ultimately yielded federally supervised territories that eventually became states, such as Ohio, Indiana, Illinois, and Michigan, and the same procedure was followed as the United States acquired new lands to the west.⁵

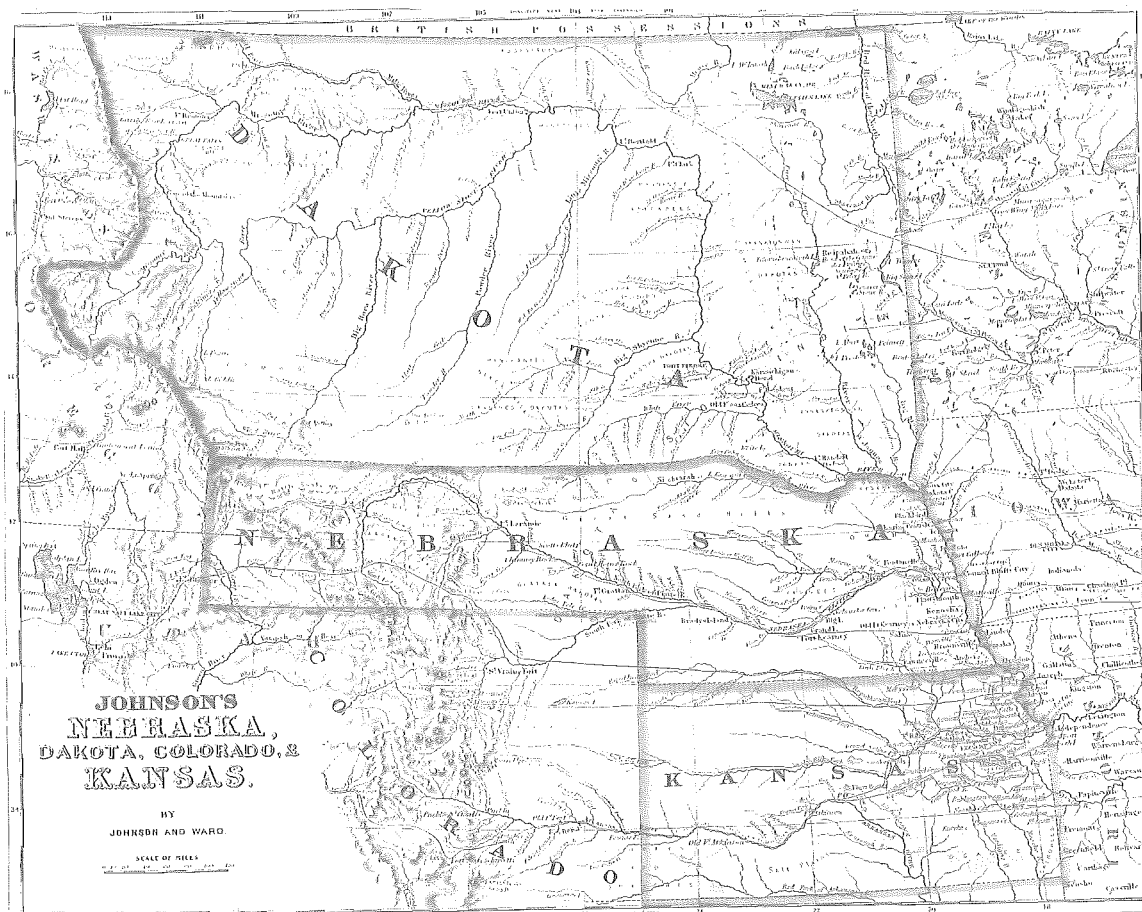


Fig. 4 NSHS-M78/186a/J63n

The first and largest reduction in the Nebraska Territory land mass (nearly 245,000 square miles) came February 28 and March 2, 1861, with the creation of Colorado and Dakota territories (Fig. 4). The boundary between Nebraska Territory and Dakota Territory was set at the forty-third parallel of north latitude until it intersected the Keya Paha River. From that point eastward, the boundary followed the Keya Paha to its confluence with the Niobrara River, then along the latter stream until it emptied into the Missouri. At a stroke of the pen, the Ponca Reservation was transferred into Dakota Territory though, as an Indian reservation, jurisdiction remained with the United States.⁶

The final Ponca treaty with the United States was negotiated in Washington, D.C., on March 10, 1865. It provided that the Poncas cede the western part of the reservation established in 1858 in return for land to be added on the east, an area located in today's Knox County, lying north and west of the Niobrara River near its mouth and south of Ponca Creek (Fig. 5). With this treaty, the reservation comprised some 96,000 acres.⁷

Throughout the 1860s things had been going terribly wrong for the Poncas. Sioux attacks

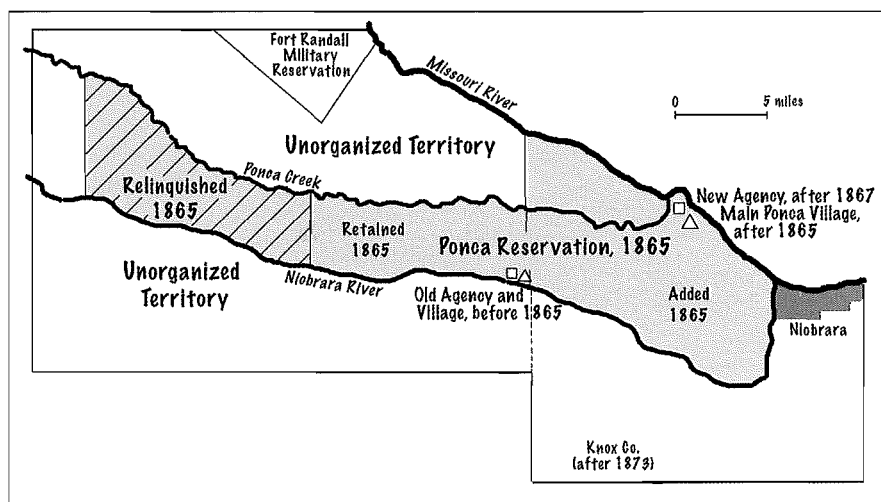


Fig. 5 Ponca Reservation, 1865. Map by Steve Ryan

became more frequent, making it difficult for the Poncas to leave their reservation to hunt or even, in some cases, to tend their fields. The government utterly failed to provide the promised protection. Crop failures were frequent due to drought and grasshoppers. The rations the government supplied were inadequate.⁸

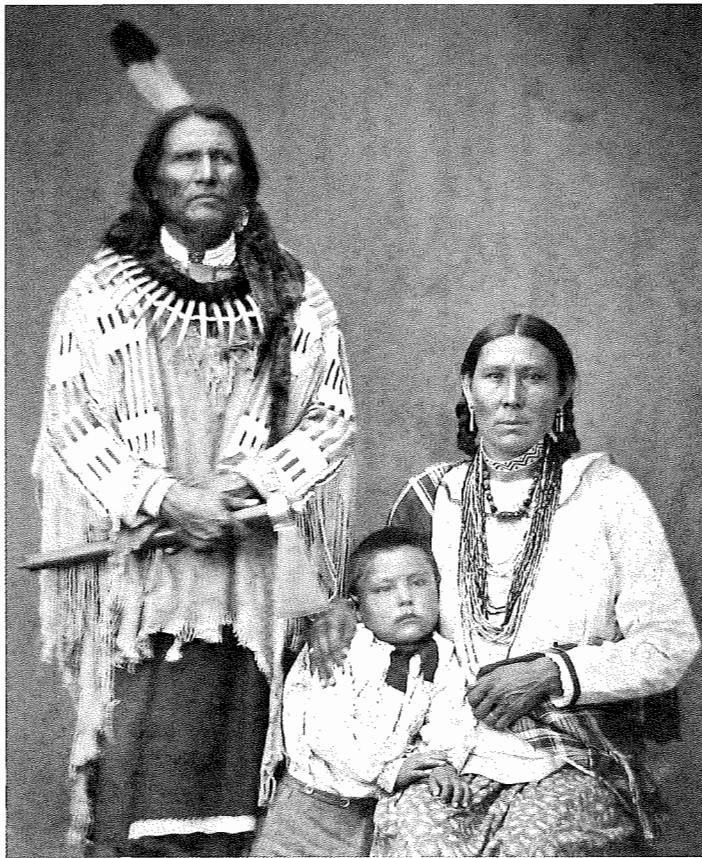


Fig. 6 Standing Bear and his family. NSHS-RG2066.PH:6-9

Just when it seemed things could get no worse, a blunder in drafting the text of the famous Fort Laramie Treaty of 1868 placed the Ponca reservation within the Great Sioux Reservation, which was essentially all of Dakota Territory west of the Missouri River and north of the Nebraska-Dakota boundary. The government could not or would not rectify the error, and Sioux attacks upon the

Poncas intensified. The tribe faced near starvation, not being able to hunt or raise crops.⁹

The government failed to protect the Poncas, and made

no effort to restore their title to the reservation. The simplest solution was to get them out of the way, and in the end, the Poncas were sent to Indian Territory (Oklahoma). As one critic put it, it was a case of "the government seeming to consent to the sacrifice of the rights and the peace of a tribe which had never made war upon it, and never broken faith with it, rather than seek a just settlement with a more powerful tribe that had defied it."¹⁰

An act approved August 15, 1876, appropriated \$25,000 to pay for removing the Poncas to Indian

Territory and procuring a reservation, "with the consent of said band." Although that the Poncas never gave their consent as the law required, the commissioner of Indian affairs ordered them to Indian Territory in the summer of 1877 and sent them south, a trek recalled as the "Ponca Trail of Tears."¹¹

The Poncas did not fare well in Indian Territory, where the land was poor and the climate very different from that of their homeland, and many died. The story of Chief Standing Bear's return to Nebraska in 1879 to bury his son, his incarceration by the army, and his landmark trial in U.S. District Court in Omaha is perhaps the most familiar chapter in the Ponca saga (Fig. 6). After Judge Elmer S. Dundy ruled that an Indian was a person within the meaning of the law and ordered Standing Bear's release, the chief and his remnant band returned to their old Niobrara River homeland. By 1882 nearly 170 Poncas were living there, although most of the tribe had remained in the south.¹²

Standing Bear's Poncas, however, were in limbo, no longer having title to their former reservation. In 1880 a Senate committee held hearings and took testimony on the Ponca removal in connection with a bill to restore them to their old reservation. The bill provided \$50,000 to return all the Poncas and rebuild their agency, but it failed to pass.¹³

Subsequently President Rutherford B. Hayes appointed a commission consisting of Generals George Crook and Nelson Miles and civilians William Stickney and Walter Allen to consider "the Ponca removal" and determine "what justice and humanity require should be done by the Government of the United States." The commission's report indicted the government for removing the Poncas "without lawful authority." One member termed the Ponca removal "a grievous error of administration, compromising the good faith of the nation in its relations with all the Indian tribes and unless rebuked, disowned, and atoned for, standing as a pernicious example."¹⁴

The commission recommended that each Ponca be allotted 160 acres of land, either at the Indian Territory reservation or from the old Dakota reservation. To do so, the government should negotiate a settlement with the Sioux to relinquish former Ponca lands. Furthermore, \$25,000 should be appropriated for agricultural implements, livestock, and seed, \$5,000 of which should go to the Poncas living in Dakota, the balance to be divided among the families of the whole tribe "in full satisfaction for all Sioux depredations and losses of property sustained by these Indians in conse-

A GREIVIOUS ERROR COMPROMISING
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THE BILL "WILL MAKE NEBRASKA AND DAKOTA HANDSOMER IN PROFILE."

quence of their removal." An additional \$5,000 should be appropriated to build a schoolhouse and \$5,000 more for "comfortable dwellings" for Poncas living in Nebraska and Dakota.¹⁵

Several bills were introduced in Congress to provide relief to the Poncas or "to settle their affairs." In the end, a bill approved March 3, 1881, appropriated a total of \$165,000 "to indemnify the Poncas for losses . . . in consequence of their removal to Indian Territory," and "to settle all matters of difference with these Indians." Fifty thousand dollars was earmarked to purchase a new reservation in Indian Territory for Poncas remaining in the south, and \$70,000 was put in trust, the interest to be distributed annually among all the Poncas. Various lesser amounts were to be expended to erect dwellings and purchase agricultural implements for the Poncas living in Nebraska and Dakota. Finally, Congress directed that the Poncas be allotted land in severalty on either the old or new reservation.¹⁶

By this time the Sioux had ceased troubling the Poncas, and Standing Bear's people had been on friendly terms with the Oglalas and Brules. Tribal leaders had counseled and concluded a peace agreement in 1876. The Sioux, however, did not agree to the restoration of the Poncas to their old reservation without compensation. In 1879 Spotted Tail and other Brule leaders wrote the commissioner of Indian affairs stating that the Poncas had no right to the land under the terms of the 1868 treaty, but indicating their willingness to let the Poncas occupy the land indefinitely, if the government compensated the Brules.¹⁷

Following Spotted Tail's murder in 1881 Sioux representatives from the Pine Ridge, Rosebud, and Standing Rock agencies, including Red Cloud and Young Man Afraid of His Horses, were summoned to Washington to sign an agreement giving the Poncas sufficient land on the former Ponca reservation to provide each head of a family a tract of 640 acres, and lesser amounts to single adults. As required by the treaty of 1868, however, the agreement would not be binding until ratified by three-fourths of all adult male Indians residing on the Sioux Reservation. While many Sioux from other bands approved the agreement, the Brules refused. They would agree to give no more than 160 acres to each Ponca family and 80 acres to each single adult. Faced with this reality, the government determined that the 1881 agreement had been ratified, albeit at the lower acreage level.¹⁸

While negotiations and legislation seeking restoration of land to Standing Bear's people were underway, Nebraska U.S. Senator Alvin Saunders in December 1879 began the process of securing to Nebraska not only the former Ponca Reservation, but also other lands lying north of the Keya Paha and Niobrara rivers (Fig. 7). All of this area was part of the Sioux Reservation in Dakota Territory except for a segment of the Fort Randall military reservation, but at least most of the Poncas were gone.

Saunders's bill, S. 550, "An Act to Extend the Northern Boundary of the state of Nebraska," would establish the state line at the forty-third parallel of north latitude, beginning where the parallel intersected the Keya Paha River and continuing eastward to the Missouri River, this removing the "dimple" in Nebraska's northern border. The forty-third parallel already formed the boundary between Nebraska and Dakota Territory west of the Keya Paha River. The bill also provided that the boundary change and Nebraska's jurisdiction over the area would not begin until the Indian title had been extinguished and so proclaimed by the President. Furthermore, the bill required the Nebraska legislature's assent.¹⁹

The Nebraska press endorsed the bill. The *Niobrara Pioneer* noted that it would move the state boundary where the line should have been established in the first place. The *Nebraska State Journal* (Lincoln) opined that the bill "will make Nebraska and Dakota handsomer in profile."²⁰

Debate began in the Senate on January 20, 1880, with his colleagues grilling Saunders on why the bill was necessary. He responded that the principal reason was to straighten Nebraska's northern border and fix a more permanent boundary than the shifting channels of the Keya Paha and Niobrara rivers. He downplayed the significance of the territory that Nebraska stood to gain, noting that it constituted about eighteen townships. Asked repeatedly about the practicality of Nebraska acquiring territory over which it would have no jurisdiction, Saunders reiterated that the bill would not become effective until the Indian title was extinguished. Moreover, once the land was ceded to Nebraska, the federal government would administer it as public domain until it could be transferred to private ownership under federal land laws. The bill, with several amendments, finally passed the Senate on May 22, 1880, but was not reported out of committee in the House before Congress adjourned.²¹

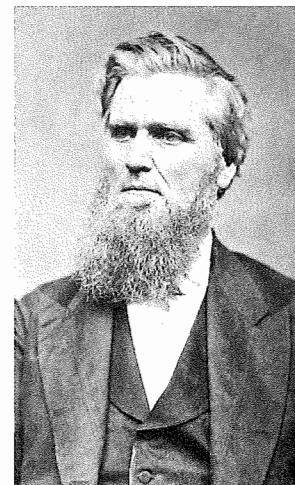


Fig. 7 Alvin Saunders, U.S. Senator from 1877 to 1883.
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NEBRASKA
GAINED ABOUT
379,000
ACRES AND
ONE ENTIRE NEW
COUNTY.

Saunders was back with a second bill in the 1882 session. He had slyly redrafted it with its original language, without the 1880 amendments. When debate began, Saunders blandly assured his colleagues that it was "the same exactly" as the bill that had passed the Senate earlier. He now stated that the land to be ceded involved only about two townships, "but it is in such an irregular shape that I cannot tell exactly the quantity." Senator Henry Dawes, woefully uninformed, assured his colleagues that the bill included "just the old Ponca Reservation" when, in fact, of the approximately 406,566 acres in question, only 96,000 acres comprised the former Ponca Reservation.²²

In the House, Nebraska Congressman E. K.

SCALE 0

0 10 20 40 60

could take effect as long as the land remained part of the Great Sioux Reservation. But land-hungry Dakotans saw the reservation as a bar to settlement and eventual statehood, clamored for major cessions of Sioux lands. In 1882–83 a government commission tried and failed to get the necessary three-fourths of the Sioux to agree to cede so-called "surplus" land and move to smaller reservations. In 1888 Congress passed a "Sioux Bill" dividing the reservation into six smaller reserves and returning the excess lands to the public domain, but the Sioux again rejected the proposal.²⁴

A second Sioux Bill, passed March 3, 1889, included the same provision for smaller reservations, but offered more generous payment to the Indians for the ceded land. A commission headed by Gen. George Crook was appointed to sell the plan to the Sioux. After numerous meetings and much oratory on both sides, the government deemed that three-fourths of the eligible Sioux on the reservation had approved. As a result the Pine Ridge, Rosebud, Standing Rock, Cheyenne River, Lower Brule, and Crow Creek reservations were carved from the Great Sioux Reservation and the remaining land, some 11 million acres, reverted to the public domain.²⁵

The 1899 bill finally provided the mechanism to allot land to the Northern Poncas and at the same time, to extinguish the Indian title to much of the former Great Sioux Reservation, including the area that would be added to Nebraska under Senator Saunders's 1882 enabling legislation. The bill provided that each member of the Ponca Tribe living on the old reservation was entitled to an allotment ranging from 320 acres for the head of a family to 80 acres for persons under age eighteen. When all was said and done, 27,236 acres of their old reservation were allotted to 168 Poncas.²⁶

The allotments completed, President Benjamin Harrison proclaimed on October 23, 1890, that the Indian title was extinguished to the un-allotted land south of the forty-third parallel and the area was open for settlement. With that proclamation the new state boundary took effect, and Nebraska assumed jurisdiction according to the act of 1882.²⁷

It remained for Nebraska to establish local government in its newly acquired territory, which the legislature did in 1891 by approving the organization of Boyd County from "the unorganized territory lying north of Holt County." The county

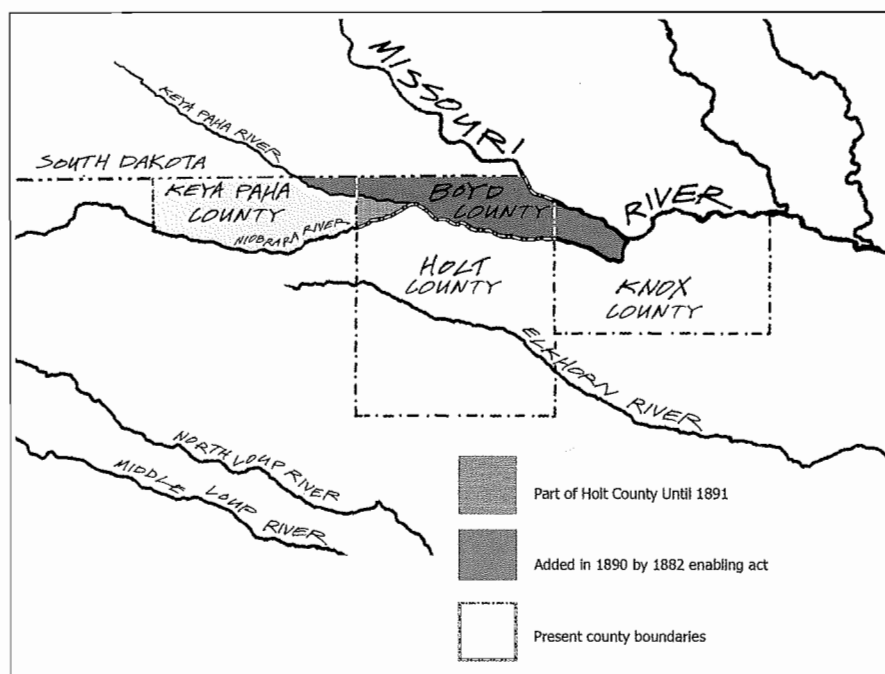


Fig. 8 Map by Steve Ryan

Valentine dispensed a similar smokescreen, estimating the amount of land involved at about a township and a half. The near agreement between Saunders and Valentine's 1882 estimate of two townships or less, compared to Saunders's more realistic 1880 estimate of eighteen townships, suggests that the Nebraskans had decided on the lower number to reinforce their argument that land acquisition for Nebraska was a secondary issue. Apparently none of their fellow legislators detected the discrepancy. The bill passed the House and became law March 28, 1882. During its 1882 special session, the Nebraska legislature voted to accept future jurisdiction over the territory.²³

Neither Saunders's bill to adjust Nebraska's northern boundary, nor the allotment provision of the 1881 act to provide relief to the Poncas

was named for Nebraska Governor James E. Boyd. In 1893 the legislature redefined the boundaries of Keya Paha County (which had been created from northern Brown County in 1884), adding a small segment of former Great Sioux Reservation land lying between the Keya Paha River and the forty-third parallel. That part of the old Ponca Reservation north and west of the Niobrara River near its mouth was added to Knox County in 1890 (Fig. 8). The legislature had provided for this contingency in an 1883 act.²⁸

The Poncas who remained in Nebraska ended up with less than a third of the former 96,000-acre reservation and, over time, sold most of their allotments to whites. The Poncas who remained in Indian Territory got nothing from the old reservation, although the government provided the funds to purchase the Oklahoma reservation, which was subsequently allotted to the Southern Poncas. Most of these Poncas, too, sold their land to white buyers.²⁹

The Sioux, who had inherited the Ponca Reservation by mistake in 1868, lost it in the end, along with much of the other land they once had claimed. The state of Nebraska gained about 379,000 acres after the Ponca allotments were subtracted, and one entire new county. Now the mapmakers could draw a straight line all the way to the Missouri River to mark Nebraska's northern boundary.³⁰

One conclusion is beyond dispute. Had the land lying between the Keya Paha and Niobrara rivers and the forty-third parallel not been added to Nebraska in 1890, there would have been no battle a century later over building a nuclear waste dump in Boyd County, Nebraska, because there would have been no Boyd County, Nebraska.

NOTES

¹ William E. Sturtevant, General Ed., *Handbook of North American Indians*, Vol. 13, pt. 1, Plains, Raymond J. DeMallie, ed., (Washington, D.C.: Smithsonian Institution, 2001), 416–18; Gary E. Moulton, ed., *The Journals of the Lewis and Clark Expedition*, Vol. 3, August 25, 1804–April 6, 1805 (Lincoln: University of Nebraska Press, 1987), 48–50.

² Charles J. Kappler, comp., *Indian Affairs, Laws and Treaties*, Vol. 2, Treaties (Washington, D.C.: GPO, 1904), 140, 225–27.

³ *Ibid.*, 608–14, 764–67.

⁴ *Ibid.*, 772–75; *Handbook of North American Indians*, 13:1, 418, 424–25.

⁵ Roy F. Nichols, "The Territories: Seedbeds of Democracy," *Nebraska History* 35 (September 1954): 161–62.

⁶ Albert Watkins, "Territorial Evolution of Nebraska," *Nebraska State Historical Society Publications* 16 (1911): 140; Addison E. Sheldon, *Nebraska: The Land and the People*, Vol. I (Chicago: The Lewis Publishing Co., 1933), 367.

⁷ Kappler, *Laws and Treaties*, 2:875–76; "Report of Special Commission to the Poncas," *Report of the Commissioner of Indian Affairs for the Year Ending June 30, 1881* (Washington, D.C.: GPO, 1881), 219 (hereafter cited as "Report of the Ponca Commission").

⁸ David J. Wishart, *An Unspeakable Sadness: The Dispossession of the Nebraska Indians* (Lincoln: University of Nebraska Press, 1994), 144–50.

⁹ *Ibid.*, 204–5.

¹⁰ "Report of the Ponca Commission," 219.

¹¹ Charles J. Kappler, comp., *Indian Affairs: Laws and Treaties*, Vol. 1, Laws (Washington, D.C.: GPO, 1904), 167; Wishart, *An Unspeakable Sadness*, 209–10.

¹² James T. King, "'A Better Way': General George Crook and the Ponca Indians," *Nebraska History* 50 (Fall 1969): 239–56, and James B. Lake, "Standing Bear Who?" *Nebraska Law Review* 60 (1981): 451–503, review the Standing Bear trial. The number of Poncas on the old reservation is given in Albert Watkins, "Nebraska Territorial Acquisition," *Nebraska State Historical Society Publications* 17 (1913): 83, citing *Annual Report of the Commissioner of Indian Affairs*, 1882.

¹³ "Report to Accompany S. 1298 for the relief of the Ponca Indians," 46th Cong., 2d sess., Senate Report No. 670, xviii–xix (hereafter cited as "Report on Ponca Removal").

¹⁴ "Report of the Ponca Commission," 217, 220.

¹⁵ *Ibid.*, 218.

¹⁶ Watkins, "Territorial Acquisition," 83–85; *Annual Report of the Commissioner*, 1881, xlviii; Kappler, *Laws and Treaties*, 1:191.

¹⁷ "Report on Ponca Removal," 464–65, 485–87.

¹⁸ *Annual Report of the Commissioner*, 1881, xlviii–xlix; Watkins, "Territorial Acquisition," 85; *Annual Report of the Commissioner*, 1882, lxx–lxvi.

¹⁹ Watkins, "Territorial Acquisition," 53–55.

²⁰ *Niobrara Pioneer*, Dec. 23, 1879; *Nebraska State Journal*, Dec. 21, 1879.

²¹ Watkins, "Territorial Acquisition," 54–69, reprints the debate from the *Congressional Record*.

²² *Ibid.*, 70, 73, 75.

²³ *Ibid.*, 77–81; *Laws of Nebraska*, 1882 (Omaha: Henry Gibson, 1882), 56.

²⁴ James C. Olson, *Red Cloud and the Sioux Problem* (Lincoln: University of Nebraska Press Bison Books, 1975), 287–94, 309–11.

²⁵ *Ibid.*, 312–19, 288.

²⁶ Kappler, *Laws and Treaties*, 1:328–33; Watkins, "Territorial Acquisition," 86.

²⁷ Kappler, *Laws and Treaties* 1: 946–48.

²⁸ These statutory organizational and boundary changes are transcribed in "Creation of County Boundaries in Nebraska and Chronological Changes from 1854 to 1929, Inclusive," unpublished ms., Nebraska State Historical Society.

²⁹ *Handbook of North American Indians*, 13:1, 427.

³⁰ Watkins, "Territorial Acquisition," 81.