



Nebraska History posts materials online for your personal use. Please remember that the contents of *Nebraska History* are copyrighted by the Nebraska State Historical Society (except for materials credited to other institutions). The NSHS retains its copyrights even to materials it posts on the web.

For permission to re-use materials or for photo ordering information, please see:

<http://www.nebraskahistory.org/magazine/permission.htm>

Nebraska State Historical Society members receive four issues of *Nebraska History* and four issues of *Nebraska History News* annually. For membership information, see:

<http://nebraskahistory.org/admin/members/index.htm>

Article Title: "To Make Some Provision For Their Half-Breeds," The Nemaha Half-Breed Reserve, 1830-66

Full Citation: Gregory J Johansen, "'To Make Some Provision for Their Half-Breeds,' The Nemaha Half-Breed Reserve, 1830-1866," *Nebraska History* 67(1986): 8-29

URL of article: <http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1986H-BReserve.pdf>

Date: 2/15/2012

Article Summary: The Treaty of Prairie du Chien set aside the Half-Breed Tract in southeastern Nebraska for mixed bloods so they could assimilate into white society. The mixed bloods who received property after years of disputes over tract boundaries and qualifications of recipients quickly sold their land to whites.

Cataloging Information:

Names: Isaac McCoy, John Calvin McCoy, JW Polke, John Dougherty, Justus Cozad, Michael McManus, William Goodwin, Fenner Ferguson, Charles E Mix, William Stark, J Sterling Morton

Place Names: Big Nemaha River, Little Nemaha River, Archer (Richardson County)

Surveyors of the Nemaha Half-Breed Reserve: John Calvin McCoy, JW Polke, Justus Cozad, Michael McManus, William Goodwin

Keywords: Half-Breed Tract, Treaty of Prairie du Chien (1830), mixed bloods, Omaha Indians, Iowa Indians, Oto and Missouri Indians, Yankton Sioux, Santee Sioux, John Dougherty, Kansas-Nebraska Act (1854), Fenner Ferguson, Charles E Mix, William Stark, *Stark v. Starrs*, vote fraud

Photographs / Images: The Reverend Isaac McCoy, John Calvin McCoy, map of the Half-Breed Tract, Oto mixed blood Baptiste Deroin, Justus L Cozad

“To Make Some Provision For Their Half-Breeds,” The Nemaha Half-Breed Reserve, 1830-66

By Gregory J. Johansen

An advertisement in the *Rulo Western Guide* of 9 July 1858 stated that “[a]ny person desirous of purchasing a Home on the Half Breed Reserve, can find an opportunity of securing themselves a farm, situated on the road to Ft. Kearny and within two miles of the town of Rulo.” This advertisement was typical of real estate advertisements in many frontier areas, except that the land offered was on the ill-defined Half-Breed Reserve. This area was set aside by the 1830 Treaty of Prairie du Chien for the mixed bloods of four Missouri River valley Indian tribes. The advertisement was unique, because government agents were still allotting the land to the mixed bloods when it appeared. It illustrates how quickly the mixed bloods sold their land and the extent of the land hunger of white settlers. The fact that the advertisement ran so quickly after the allotment process began also hints at the ineptitude and lack of commitment of the United States government. The Half-Breed Reserve was meant to be a permanent home for mixed bloods. They were not “white” enough to fit into white society, nor could they be forced to live with Indians, so a separate area was thought to be the perfect solution.

Unfortunately, the Half-Breed Tract not only failed to provide a home for the mixed bloods, it also became a point of controversy for many years. The failure of the tract to fulfill its expectations was due to the failure of the United States government to abide by the Treaty of Prairie du Chien, the greed of white settlers, and the poor wording of the treaty. Three aspects of the Half-Breed Tract will be examined, and this article will show how the three reasons for failure affected each aspect. The first problem was the location of the western boundary of the tract, which took twenty-eight years to settle. The second problem dealt with the allotment of land to the mixed bloods, which was not completely settled for thirty-six years. The third problem was the status of the Half-Breed Tract and whether it was part of Nebraska.

The Treaty of 15 July 1830 was signed at Prairie du Chien, Wisconsin, between the United States and the Sac and Fox, Omaha, Iowa, Oto, Missouriia, and several bands of Sioux. The tribes ceded all their rights to an area east of the Missouri River, between the northern boundary of Missouri and the southern boundary of Minnesota. Articles Nine and Ten provided that a reserve be created for the mixed bloods of the Omaha, Iowa, Oto, and Missouriia, as well as the Yankton and Santee bands of Sioux. This reserve was located west of the Missouri River between the Big Nemaha and the Little Nemaha rivers. The western boundary would begin at a point ten miles in a direct line from the mouth of the Little Nemaha River. From this point the boundary would proceed "in a direct line, to strike the Grand Ne-mohaw [sic] River ten miles above its mouth."¹ The area contained approximately 138,000 acres of prime farm land.

The treaty authorized the President of the United States to allot this land to any mixed blood in fee simple, and each allotment could be no larger than 640 acres. The treaty did not state when the President had to allot this land, and until he did so, the land was to be held by the mixed bloods in common as other Indian lands were held.² The mixed bloods could only convey the land to the United States, not to any private individuals. Article Ten stated that in return for ceding the land, the Oto should receive \$3,000, to be paid from the annuities of the Omaha, Iowa, and Yankton and Santee bands of Sioux. Each of the three tribes would pay \$100 per year for ten years.³

The mixed bloods were the children of French traders, soldiers, and other whites by Indian women. Why was a special area set up for them? No definitive answer has been found, but two theories may explain the origin of the tract. The first explanation is that because mixed bloods were neither fully white nor fully Indian, they could not be treated as either white or Indian. This explanation appears in many articles and books from the era of the tract. One author noted:

[I]t required but little logic to show that the lawful son of a Frenchman could not be subject to the laws governing Indians of full blood, or forcibly amalgamated with a tribe, nor could the half-Indian assume full rights of his father. The half-breeds were a new element in Uncle Sam's cosmopolitan brood, and special measures were necessary to meet their case.⁴

The second explanation has nothing to do with the mixed bloods' status but rather with land. When the Lake Pepin Half-Breed Reserve was set up in Minnesota, one of the motivations was that the white treaty negotiators wanted to use the mixed bloods of a particular tribe to convince the tribe to sign the treaty. In return the mixed bloods would get land in the new reserve. The mixed bloods as a group did not want to leave their white or Indian families and move to the reserve.

They hoped that when the patents in fee were issued, they could sell the land quickly and return to their white or Indian families.⁵ This same motivation may have been involved in setting up the Nemaha Half-Breed Reserve.

However, the mixed bloods could not immediately take advantage of the treaty. By 1833 there were between 150 and 200 mixed bloods on the reserve, but the federal government took no action to allot or even survey the land.⁶ Why the government was so slow to act is not known, but an impression can be gained from the Reverend Isaac McCoy, a Baptist missionary stationed in Bellevue in 1838. He felt that as soon as this land was allotted, the mixed bloods would sell the land to whites and that "the door would be open to the ingress of a white population into the Indian territory, and, most likely, without the possibility of again closing it."⁷ Another reason for the government's delay was that no provision was made in the treaty for paying for the allotting process or defining how much "blood" was necessary to receive an allotment. These two problems would not be resolved until 1854.

Prior to 1837, Indians and mixed bloods frequently requested that the treaty stipulations be fulfilled. Congress authorized payments to the Oto for their cession in February 1837, and in April of that year Isaac McCoy was authorized to survey the tract and to compile a list of eligible mixed bloods. However, McCoy was not told who would be eligible.⁸ The government's lack of interest is indicated by the lack of



The Reverend Isaac McCoy

instructions and the fact that a Baptist missionary was assigned the surveying task. McCoy gave the surveying job to his son, John Calvin McCoy, who began surveying the boundary lines but became ill before he could finish. He gave J. W. Polke the task of finishing the survey. But Polke had no practical surveying experience, and as can be expected, he made a mistake. The western boundary of the tract was to meet the Big Nemaha River at a point ten miles from its mouth. McCoy's survey found the contact point slightly over eight miles from the mouth of the river. It is this survey that caused most of the difficulties during the next twenty years.⁹

With the survey completed, Isaac McCoy was not convinced that the land should be allotted. He recommended to Washington that the mixed bloods' claims be extinguished. He also felt that the claimants should be found and paid for their claims.¹⁰ McCoy's advice was accepted by the government, and John Dougherty, Indian agent for this area, was authorized to extinguish the claims. Dougherty tried to contact all mixed bloods to convince them to sign a treaty relinquishing their right to the reserve. In return for their signature, the government would pay the mixed bloods \$1 per acre.¹¹ The treaty was signed by ninety-nine members of the Omaha, Oto, and Yankton and Santee bands of Sioux and was sent to the secretary of war for his approval. He found that only two mixed bloods had actually signed the treaty and recommended that the treaty be rejected. President Martin Van Buren and the Senate concurred, and the treaty was rejected on 26 January 1839. Thus the Treaty of 1830 had not been implemented, and the mixed bloods were left without any land.¹²

Between 1839 and 1854 the mixed bloods had requested allotment, and whites such as McCoy called for the relinquishment of the mixed bloods' claims. The commissioner of Indian affairs received letters from the superintendent urging him to either sell it or allot it. Superintendent Thomas Harvey wrote to Commissioner T. Hartley Crawford in September 1845 and told him that contacting all mixed bloods would be too difficult, because they were scattered among different tribes. It would be easier to extinguish the claims. Harvey also feared that speculators would buy the land immediately after it was allotted.¹³

Three years later in his annual report, Harvey wrote to the new commissioner, William Medill, that the reserve was "an embarrassment to the government . . . [and] an impediment to the settlement of the country," because the land had not been sold or allotted.¹⁴ One year later a new superintendent, D. D. Mitchell, wrote to a new commissioner, Orlando Brown, that many of the mixed bloods were ready to sell and did not want to settle on the land. Mitchell recommended that the government purchase the land as quickly as possible, because "considering the vast tide of emigration that is now setting westward the

time is not distant when it will require twenty fold the amount to extinguish the title of the claimants." Mitchell also felt that by purchasing the land, the government could force the whiskey smugglers out of the area.¹⁵

These letters illustrate the procrastination of the United States government. If the government allotted the land, then speculators would move in. Yet the treaty required the president to allot the land. So the government did nothing while the number of mixed bloods increased. Those claimants living on the tract did not make improvements, because they feared that they would never gain title to it.

In the Great Nemaha Agency report for 1853, Agent Daniel Vanderslice reported that there were sixty mixed bloods living on the tract and that they were making "some advance toward civilization." Vanderslice felt that their transformation into "civilized" people would be complete when they received their fee simple title to the land.¹⁶ Whether Vanderslice's prompting had any effect is unknown, but William Sebastian, chairman of the Senate Committee on Indian Affairs, proposed an amendment to an Indian appropriation bill on 27 April 1854. The amendment authorized and required the president to fulfill the Treaty of 1830 by surveying and allotting the half-breed reserves in Minnesota and on the Missouri River. Sebastian explained that large numbers of whites were settling on the reserves and that the



John Calvin McCoy

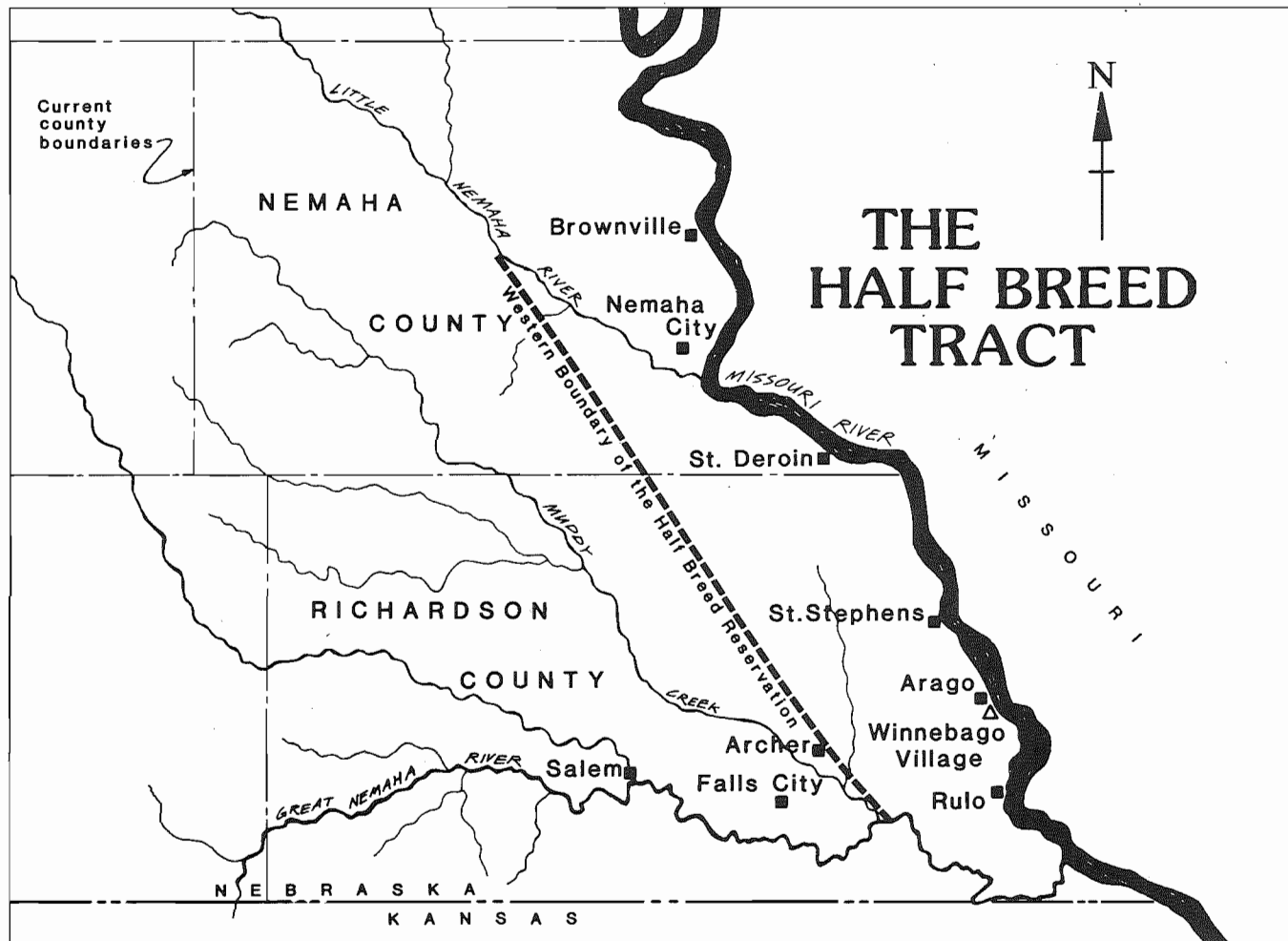
Indians "have become alarmed." If the land was not allotted to the Indians immediately, there would be nothing left to fulfill the treaty obligations.¹⁷ The committee approved the amendment, and the full House concurred on 24 July 1854. To pay for the allotment process and survey, Congress appropriated \$10,922.29.¹⁸

Congress had resolved the problem of the Half-Breed Tract, or so it thought. However, the timing of Congress's action could not have been worse. The Kansas-Nebraska Act, which opened up the area west of the Missouri River to white settlement, had been signed into law on 30 May 1854. Earlier, on 15 March 1854, the Oto and Missouria had ceded all land claims to the United States except for a small reservation on the Big Blue River. The Omaha had ceded all their land in Nebraska except for a small reservation in the northeast part of the state on 16 March 1854. Thus the only area not open to white settlement in southeastern Nebraska was the Half-Breed Reserve.

The area set aside for the reserve was some of the richest land in Nebraska, "comparable in vegetation cover to Indiana, Ohio and Kentucky."¹⁹ One local resident called the reserve one of the most valuable areas in the world.²⁰ White settlers found this area very attractive and waited anxiously for the land to be allotted so they could buy it from the mixed bloods. But first the western boundary had to be resurveyed, because McCoy's survey markers had been destroyed in the ensuing sixteen years. Justus Cozad was ordered to do the survey, and he completed the work on 31 October 1855. But he reported trouble locating the southwest and northwest corners, which had been destroyed.²¹ Cozad's line was very close to McCoy's original survey, but Cozad had made the same error that McCoy had made. McManus, who was surveying the township lines in the area, discovered Cozad's error. The day after Cozad finished running the line, McManus wrote to his supervisor, Robert Ream, that he was beginning work and had run across Cozad's boundary stakes. On November 7 McManus reported that he doubted whether the line was correct, because he found "stakes driven down (or rather stuck) every ½ mile." The angle of the line was not correct and McManus stated:

I am informed . . . that Mr. Cozad had run the line to the Little Nemaha and returned again and corrected into line. The stakes are the flimsiest I ever seen [sic] placed for such a purpose. A child 12 months of age could pull them up. This is why I am so dubious of . . . [the line] being permanently established.²²

McManus was directed to find out how far off the line was. He found that the correct line was "in another township with a difference of 12 [degrees] in the bearing of the line." He stated that he was determined not to give up until he got the situation straightened out.²³ He re-examined both McCoy's and Cozad's lines and found both inaccurate.



McManus wrote that McCoy should run the line again, but he doubted that the correct line could be found.²⁴

Both McCoy and Cozad had made an error, but McManus did not know what they had done wrong. No definitive answer has been found, but there are three possible explanations. The first is that both McCoy and Cozad misunderstood the treaty boundaries and measured ten miles from the mouth of the Big Nemaha River, not in a direct line but by following the meanders of the river.²⁵ The treaty clearly states that the line should strike the Big Nemaha River ten miles above its mouth in a direct line.

A second explanation for the error is that in the years between 1838 and 1855 the Missouri River eroded two miles of land at the mouth of the Big Nemaha. When McManus resurveyed the line, naturally it was two miles farther west than McCoy's. A number of settlers used this explanation in a petition to the Office of Indian Affairs in February 1857. The commissioner's office examined the township plats and found that the Missouri River could not have eroded that much land: "The shore of the Missouri River is so rocky that no considerable portion of the soil could possibly have been removed by natural washings of that stream."²⁶ A simpler variation of this theory is that when Cozad ran his line in 1855, he ended up with the same line as McCoy. If the Missouri River had washed out two miles of river bank, then Cozad's line should have been two miles farther west than McCoy's.

A third explanation can be found in a newspaper article in the *Nebraska State Journal* of 28 February 1909. The article claimed the McCoy line was correct all along. The resurvey was deliberately ordered to move the boundary line farther west. "The whole thing was a scheme of some smart Americans to get more land into the Indian reservation at the expense of the United States and then separate those feeble people from it by sharp practices best known to themselves."²⁷ This theory is certainly not adequate. McManus's letters clearly show that he stumbled upon the error by mistake. The most plausible reason for the error is that during the confusion of John McCoy's illness, his replacement surveyed the Big Nemaha by following the meanders. This explains why the contact point on the Little Nemaha is ten miles in a direct line from the mouth and yet the contact point on the Big Nemaha is only eight miles. However, in 1855 no one knew the explanation, and there was still doubt as to where the western boundary was located.

White settlement did not wait for the surveyors to complete their work. The Nebraska territorial legislature divided the eastern half of the territory into counties in 1855. The area around the Half-Breed Tract was designated as Richardson County, but the tract itself was not included within its boundaries.²⁸ The town of Archer, located just outside the tract, was designated as county seat. The first census of

Nebraska Territory counted 299 people living in Richardson County. A separate census of the Half-Breed Reserve revealed 152 whites and five slaves living there. The 1856 census deliberately omitted the Half-Breed Tract, because it was not considered part of the territory.²⁹ The number of whites recorded by the census as living on the tract should not be misconstrued as being the number of mixed bloods. There was nothing in the census that broke down the category of whites into racial background. Whites were living in towns along the Missouri River such as Rulo and Arago.

As the population grew, doubts about the accuracy of the boundary line also increased, and local residents felt obliged to defend themselves. White pressure for land could be seen in the "boomer" articles that appeared in territorial newspapers. The *Nebraska Advertiser* of 14 June 1856 carried an article extolling the virtues of Richardson County and describing the Half-Breed Reserve as "beautiful and valuable country." The reserve "has materially retarded the growth of Richardson County and Archer, . . . which is near the line, and, in fact many thought it was on the 'wrong side.'"³⁰ On 9 August 1856, the *Advertiser* printed a letter from Abel D. Kirk which described the area around Archer as more beautiful than land found anywhere else. Kirk stated that although Archer was located near the tract boundary, it was not on the tract: "This we may with confidence say, is now a settled fact."³¹ Kirk was referring to the just completed Cozad survey.

Kirk's optimism was misplaced. At the time that Kirk's letter appeared, John Calhoun, the surveyor general of Kansas and Nebraska, decided to resurvey the half-breed boundary line. Calhoun stated that "it is certain that McCoy's line is wrong. McCoy never did do anything right and his blunders have already caused very great trouble with that same reserve."³² What prompted Calhoun's interest in the boundary line is not known. Obviously McManus's letters had an effect, but there might be an alternative or supplemental reason. There was quite a contest over which town would receive the county seat in Richardson County. When Archer was named county seat, other area towns were upset, and they saw the discrepancy in the boundary line as a way to wrest the county seat from Archer.³³

Calhoun ordered William Goodwin to resurvey the boundary line. Goodwin's survey placed the western boundary two miles farther west than McCoy's and Cozad's surveys. However, like McCoy and Cozad, Goodwin also made a mistake by going too far west along the Big Nemaha River.³⁴ On 8 June 1857 John McCoy was ordered to resurvey the line yet another time to correct Goodwin's mistake. However, McCoy was negligent in his duties and subsequently fired.³⁵ The location of the boundary line was still in doubt, so William Goodwin was again ordered to resurvey it, but Goodwin was too ill to undertake the job.³⁶

All this confusion was frustrating to the settlers, mixed bloods, and surveyors. A good example of this frustration is Michael McManus's letter accompanying the township surveys for the Half-Breed Tract. McManus began by saying "I send you . . . the remainder of the 'infernal' Half-Breed contract." He had been told by another surveyor that one of his meanders was wrong. "For *Jesus* sake fix it for me. . . . Don't for Lord's sake send me back to Nebraska, I have had so many meanders that I wonder there are not more of them wrong."³⁷

Goodwin's survey caused an uproar among white settlers along the tract. Many settlers had claimed land just outside the McCoy line and felt that they had invested too much time and effort to see it turned over to mixed bloods. Between fifty and 100 families and the town of Archer were in this disputed area.³⁸ The settlers petitioned the territorial legislature to protest the survey. The legislature passed a resolution on 9 February 1857 "for the relief of certain citizens in Richardson County." The resolution described the settlers' efforts at improving the land "in good faith" and stated that they should not have to forfeit their land because of a surveyor's error. The legislature called upon Congress to settle the problem and authorized Nebraska's delegate to Congress, Fenner Ferguson, to work for the "relief" of the settlers.³⁹

The settlers' anger boiled over in September 1857. A group of them held a mass meeting in Archer and adopted a resolution stating that "we will continue to hold and to occupy our lands at all hazards, [and] will only be driven from them by a superior force."⁴⁰ In response to the settlers' outcry, Acting Commissioner of Indian Affairs Charles E. Mix examined the history of the treaty and determined that "the stipulations of the treaty would remain unexecuted until the boundaries specified be established in the position contemplated by its inflexible requirements." Mix also stated that the settlers were in violation of treaty and the Kansas-Nebraska Act, which exempted Indian land from jurisdiction of territorial laws. Mix's statement clearly showed that he considered the Half-Breed Tract to be Indian land. Mix contacted the surveyor general, who stated that when the Cozad survey was done in 1855, there were only two or three white settlers in the disputed area.⁴¹

Mix did not realize (or ignored) the fact that Cozad's line confirmed McCoy's original line. Therefore, the settlers who arrived immediately after Cozad had finished would have thought that his was the official line. Mix mentioned a United States Supreme Court case, *Fellow v. Blacksmith*, which held that a treaty with the Indians becomes the supreme law of the land. Mix applied this decision to the reserve and stated that "the McCoy line . . . should be set aside on the ground of conflict with the treaty." He also extended his opinion to cover any subsequent action by Congress to make the McCoy line the official



Oto mixed blood Baptiste Deroir received a land allotment in the half-breed tract.

designation. Any congressional action of this type would conflict with the treaty stipulations and would be considered null and void.⁴²

Congress moved to take the action that Mix feared by passing an appropriation bill on 20 May 1858. When the bill reached the Senate, it was referred to the Committee on Finance where Senator Stuart proposed three amendments. One of them proclaimed that the McCoy line be established as the "true western boundary of said tract." Stuart justified his amendment by stating that over \$70,000 in improvements had been made by settlers on the disputed territory, and it would be unfair to force the people out. Stuart felt that even with the McCoy line as the western boundary, there would be "more land than is necessary to do justice to the half-breeds." The chairman of the committee, Senator R. M. T. Hunter, opposed the amendment on the grounds that it was legislation and should not be attached to an appropriation bill. The committee and the full Senate disagreed with him and approved the amendment.⁴³

The amendment went back to the House for approval. Representative Glancy Jones and the Committee on Ways and Means recommended rejection of the amendment. Jones stated that the amendment would take land away from the mixed bloods, who were entitled to it under the Treaty of 1830. Fenner Ferguson, Nebraska's territorial representative, responded:

The Indian Half-Breeds . . . are squandering the property that comes into their hands as fast as they acquire it. If this provision is not made for the relief of the *bonafide* settlers upon that land, speculators will derive the benefit of their improvements . . . made in perfect good faith, and in utter ignorance of there being any new line to be established or run.⁴⁴

Representative John Letcher of Virginia wanted to change the amendment to provide for accepting the 1857 Goodwin line. Letcher felt that the 1830 treaty had been negotiated with "Christian Indians," and that justice and fairness demanded that the treaty be executed in good faith.⁴⁵

Ferguson responded that Hunter had never been in Nebraska and did not know the situation, while Ferguson knew that improvements were being made by settlers. Ferguson wondered whether it would be better to pay the "Indians" or the white settlers.⁴⁶ The fundamental question was whether the settlers, who in good faith had settled near the line, should be forced to give up the land or whether the mixed bloods, who were guaranteed the land under the Treaty of 1830, should lose part of their reserve due to a surveyor's error. In this instance the treaty was vindicated, because the House voted the amendment down. But the appropriation bill was sent to the conference committee to work out the discrepancy. The committee reinserted the amendment, and the bill passed both houses of Congress on 12 June 1858.⁴⁷

It appeared that Congress had finally settled the boundary question. However, the Treaty of 1830 was quite clear as to the boundary lines, and McCoy's line did not fulfill the treaty requirements. Since the Supreme Court had held that Indian treaties are the supreme law of the land, this section of the appropriation bill was in violation of the treaty and thus unconstitutional. That was the feeling of a mass meeting of mixed bloods held on 17 July 1858. A petition was drawn up and sent to the commissioner of Indian affairs which called for an attorney general's investigation of the constitutionality of the amendment. The mixed bloods also requested the commissioner to stop white settlers from entering and claiming the land in question. The mixed bloods also wanted an impartial investigation to determine the true boundary. However, it appears that nothing was done with the petition.⁴⁸

In October 1858 the western boundary of the Half-Breed Tract was resurveyed, and the McCoy line was reinstated as specified by Congress. But there was still a question of the mixed bloods' claim to the land west of the McCoy line and east of the Goodwin line. Congress decided to pay the mixed bloods for their claims. Therefore, on 28 February 1859 Congress passed, as part of the Indian Department appropriations bill, a section providing that the land between the two lines be sold to the white settlers. The land was to be sold for \$1.25 per acre in cash, and the money to be distributed to the mixed bloods at a later date.⁴⁹

Advertisements were placed in local newspapers notifying settlers living on the disputed land that they would have to pay for it immediately. Those settlers who had perfected their preemptions prior to 28 February 1859 did not have to participate.⁵⁰ A problem arose over the part of the law dealing with settlers who had already received title to the land. Of the 15,697 acres in the disputed area, 13,724 acres had been sold by 21 March 1861. Of this land, 5,462 acres had been located prior to 28 February 1859 and had been paid for in military bounty land warrants – not in cash.⁵¹ Commissioner of Indian Affairs William Dole recommended that Congress appropriate \$19,621.67 to pay the mixed bloods as stated in the law, even though part of the land was purchased through land warrants.⁵²

A list was drawn up of those who were eligible to receive land but had not. There were ninety-six names on the list, and they received approximately \$200 each.⁵³ Unfortunately, these claimants did not receive as equitable a payment as those who received land, because the cash value of a land allotment was approximately \$390. Congress appropriated the money on 3 March 1863, four years after the act authorizing land sales had been passed.⁵⁴ Some mixed bloods did not receive their money until 1866, fully thirty-six years after the treaty was signed.

The payment to the mixed bloods for the disputed area put an end to the question of the legality of Congress's action. When the Indian

Claims Commission heard the case brought by the Oto and Missouria concerning the Half-Breed Tract, the commission ruled that the United States had properly handled the situation by selling the land and reimbursing the mixed bloods. The claim was dismissed.⁵⁵

The confusion over the proper location of the western boundary line is only one of the examples of government ineptitude and negligence. While the controversy over the surveys was heating up, the allotment process had also begun. On 14 May 1856 Commissioner of Indian Affairs George Manypenny appointed Joseph L. Sharp as commissioner to collect the names of the mixed bloods who were entitled to participate in the allotment.⁵⁶ Sharp placed advertisements in local newspapers which called on mixed bloods of the eligible tribes to report to him at various locations. All those interested in the tract had to provide evidence to prove their right to participate, but the advertisements did not specify what proof was required. Sharp had the power to accept or reject a claimant as he saw fit.⁵⁷ He completed the census and sent a list of names of 427 mixed bloods eligible to participate in the allotment to Washington on 24 April 1857.⁵⁸

On 4 August 1857 Commissioner of Indian Affairs J. W. Denison assigned William Stark as special agent to determine the assignments and selection of the land for each mixed blood. Stark was given Sharp's list to check for accuracy. If there were any mistakes or omissions, Stark was to stop allotting and contact the commissioner. He was supposed to assign lots to the mixed bloods already living on them, but if a dispute arose Stark was to handle it himself. Each allottee would receive no more than 320 acres, because there were too many claimants to allot 640 acres as suggested in the treaty. This in itself indicates how the government's delay violated the treaty. The controversy over the Goodwin line was raging at this time, so Stark allotted land east of the McCoy line first, even if the new line would later be accepted. Claimants who did not contact Stark had their lands assigned for them. He was supposed to be fair, assigning as much good land as "prairie."⁵⁹ The allotment process moved swiftly enough that by 10 December 1857 fifty allotments had been made.⁶⁰

When the allotment announcement reached Nebraska, it was met with approval from most parties, but there was still some doubt about its effects. The *Nebraska Advertiser* of 1 October 1857 carried the announcement about Stark. The editor commented: "From this we may reasonably suppose that the half-breeds entitled, will shortly become possessed of titles in fee simple to their lands . . . on the other side there is ground, at least, for an argument against such a disposal."⁶¹ While the newspaper does not directly state what the argument was, it is clear that the editor feared speculators, who were the bane of the frontier as they gobbled up land and sold it to unwary settlers at high prices. But determining who a speculator was is a difficult

task. Whoever was on the land when a settler arrived was considered a speculator. In the case of the Half-Breed Tract, speculators were those whites waiting to buy the mixed bloods' allotments or who had married into a tribe to gain entitlement to the process.

The chief culprits were the whites. As one commentator has noted:

The abortive purpose of the reservation became manifest in the fraudulent and corrupt administration by white men, who through lust for land and profit, by meretricious unions and concubinage brought dishonor on their race.

Rulo, Nebraska, was the center of the "shameful traffic in half-breeds and of dishonest land assignments - the consideration being frequently that seductive commodity, a generous quantity of whiskey."⁶²

There is other evidence that buying and selling of lots occurred before the allotment process began. David Reavis, whose father, Isham Reavis, was one of the original settlers in Richardson County, even claimed that a conspiracy existed which involved William Stark. David, in a series of articles describing the Half-Breed Tract, stated that a number of towns "were located on unallotted lands which were withheld from the half-breeds until bargained for in advance and deeds gotten for considerations as trifling as a bottle of whiskey, a saddle or a pony in some instances when the allotting agent would complete the transaction." There was only one allotting agent and that was William Stark. Reavis's conspiracy theory stated that the best pieces of land were not allotted unless the mixed bloods agreed to sell them in advance. If the claimant refused to sell, he would be assigned land on the bluffs, sand flats, or in a stream bed.⁶³

Conclusive evidence to prove or disprove Reavis's theory has not been found, but the truth probably lies somewhere between Stark's complete honesty and Reavis's claims. Undeniably some fraud did exist in the allotting process. The *Nebraska Advertiser* of 29 October 1857 announced that Stark had begun allotting land and stated that the tract had attracted the attention of the "land sharks . . . and it is rumored that crowds are awaiting the division in order to enter upon it, by purchase or in any other way. In some cases fair prices have been paid for it and in others claims have been bought for a song."⁶⁴ By April 1858, newspapers in the area were reporting that the mixed bloods were selling their land as quickly as they received the allotment, "and the good old farmers are now settling in."⁶⁵ Another newspaper reported in June 1858 that within six months the majority of allotments would be in the hands of whites.⁶⁶

Stark finished allotting the land by 14 March 1860. He had assigned 365 allotments, while twenty-four were under suspension for further

study. Only forty-five acres remained unallotted east of the McCoy line. Any additional mixed bloods who qualified for an allotment would be paid from the sales of the land in the disputed area. On 14 August 1860 the twenty-four disputed cases were approved, and on 17 August Secretary of the Interior Jacob Thompson approved the entire list. There were 389 allotments, averaging 314 acres apiece for a total of 122,000 acres. The patents for these allotments were issued on 10 September 1860.⁶⁷

By March 1861 the patents had been distributed, but these were not necessary to legitimize sale of the land. The United States Supreme Court held in the 1867 case of *Stark v. Starrs* that a final certificate to a valid claim could be sold if the patents were slow in being issued. The final certificates for the Half-Breed Reserve were distributed when Stark assigned the land. Since the final patent was not necessary to sell the land, many mixed bloods sold their land quickly. An examination of the list of allottees showed that of twenty randomly selected individuals, only two had a claim to their allotments in 1877.⁶⁸

A newspaper article in 1937 reported that there was no surviving descendant of the mixed bloods who had received allotted land.⁶⁹ In 1978 the Nebraska Indian Commission reported that only one deed was still in the name of a descendant from an original grantee.⁷⁰ The *Nebraska State Journal* of 8 September 1936 reported that a forty-four acre tract had been removed from the tax roles because no patent had been issued for it. The land office determined that the land was part of the Half-Breed Tract, and because it had never been allotted, was still a tribal possession.⁷¹ This piece of land could very well be the same plot that was reported as unallotted in 1860.

The Half-Breed Tract caused a third problem that was different from allotment and surveying. When the patents were distributed in 1861, the *Nebraska Advertiser* commented: "This [distribution] is thought by some, a recognition that the Half-Breed Tract is a portion of the Territory of Nebraska. We cannot see how it can be so viewed."⁷² The *Falls City Broad Axe* also reported the distribution of patents and stated:

This is enough to set the vexed question at rest . . . We have long wished that . . . there might be an end of "contested elections." We see by a late letter from Hon. S. G. Daily [territorial legislator from Richardson County] that he is taking steps to have it [the Half-Breed Tract] recognized officially as an integral part of Nebraska.

The editor of the *Broad Axe* felt that the patents themselves, in the hands of white settlers, would be enough to guarantee them their civil rights.⁷³

What the two newspapers were referring to is the unique status of the Half-Breed Tract — whether it was part of Nebraska. The Kansas-

Nebraska Act clearly excluded Indian reservations from territorial jurisdiction.⁷⁴ This exclusion was confirmed by Commissioner Charles Mix in 1858. The first official description of Richardson County does not include the Half-Breed Tract. This unique status caused immediate problems for elections. A good example is the election of Nebraska's territorial delegate to Congress in 1860. J. Sterling Morton won the election by fourteen votes. The *Nebraska Advertiser* of 11 October 1860 noted that Morton's opponent, Samuel Daily, had won in Nemaha County, but his vote total was less than in his last election due to the number of residents of the Half-Breed Tract voting for Morton. The editor stated that "[i]n our opinion residents on Indian reservations have no . . . right to vote in Nebraska." The mixed bloods did not pay taxes or support "our organizations."⁷⁵

Daily challenged the vote total on a number of grounds, one of which was that Morton had received votes from three precincts that were on the tract. Hearings were held in Omaha in December 1860 and January 1861 to determine if vote fraud or other irregularities had occurred. Witnesses were questioned about the identity of voters from the Half-Breed Tract. There were 114 votes cast from the tract, ten for Daily and the rest for Morton. Attorneys for both parties questioned witnesses, and their examination included questions concerning what percentage of those voting were white males over twenty-one years of age who were citizens. The attorneys also wanted to know if the residents had paid taxes. Most witnesses responded that the majority of voters fit the attorneys' criteria but not all paid taxes, presumably because they thought they were on the Indian reservation and did not have to pay.⁷⁶

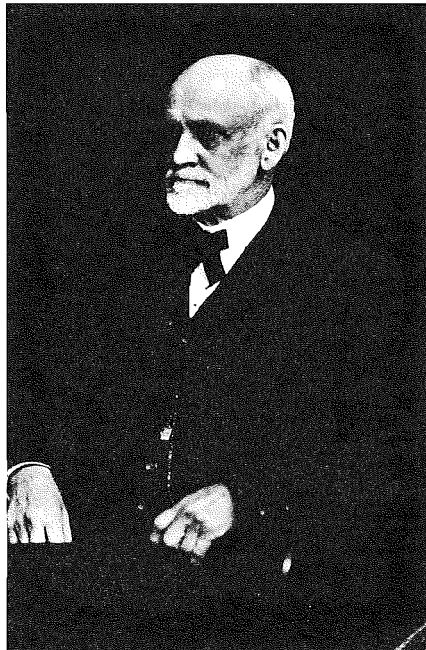
The Committee on Elections determined that vote fraud did take place and ruled that votes should be taken away from both men. Daily ended up with more votes than Morton and was thus declared the winner. The committee stated that the Half-Breed Tract was different from an ordinary Indian reservation, because the land was allotted in severalty. Therefore, the committee could not rule on the legitimacy of the votes from the tract. There were enough voting discrepancies in other areas that a decision on the Half-Breed Tract was unnecessary. In other words, Morton would have lost anyway.⁷⁷

Daily won his election without the votes from the Half-Breed Tract playing a decisive role, but W. C. Fleming was not so lucky. Fleming's opponent, Elmer Dundy, challenged the election and the Territorial Canvassing Board refused to count the votes from the tract. Fleming had won most of the votes from the tract. Thus after the votes were subtracted from the total, Dundy had the majority and won the seat. The board stated that the Half-Breed Tract was an Indian reservation and therefore no part of Nebraska.⁷⁸ Robert W. Furnas, editor of the *Nebraska Advertiser*, commented on the decision: "We are aware that

House members of the Legislature from Richardson County now hold their seats by the aid of votes cast by the residents on the half-breed land, and that those residents have heretofore voted in that county on most, or all elections." Furnas recommended that the tract be made a part of Nebraska to avoid this problem.⁷⁹

The Half-Breed Tract was clearly being used as a political football by both Republicans and Democrats. The Republican position, as stated by the *Omaha Republican*, was that the Kansas-Nebraska Act clearly excluded Indian reservations from the territory. Therefore the tract's residents had no right to vote in elections. A federal law set up the exclusion, so a federal law was required to make the area part of Nebraska.⁸⁰ The Democratic view was that the tract could not be construed to be an Indian reservation because the land was being allotted in severalty.⁸¹

Another example of the divisiveness caused by the Half-Breed Tract is a series of bills proposed in the Nebraska territorial legislature by F. A. Tisdell, representative from Salem in Richardson County, on 21 December 1860. Tisdell proposed ten bills, which would strip all rights, roads, taxes, and towns from the Half-Breed Tract. One bill would refund all taxes collected on the tract, while another would vacate all territorial and county roads there.⁸² The *Falls City Broad Axe* had this comment on Tisdell's proposals:



Justus L. Cozad

What Mr. Tisdale's [sic] object could be in offering such a bill, we can hardly conceive. The bills might probably suit some people, but we doubt very much whether it will please all these people whom Mr. Tisdale so unceremoniously proposes to strip of all their patent leather and broad-cloth, and supply with moccasins and breechcloths, instead.⁸³

Tisdale's bills were not considered, and the question of the status of the Half-Breed Tract remained unanswered.

The federal government never definitively ruled on the status of the Half-Breed Tract. It must be concluded that after the allotments were made and the land transferred to whites, the area became part of Nebraska, but as late as 1881 there was still doubt as to the tract's status. Captain W. S. Stauton, of the Army Engineer's Office, wrote to the surveyor general of Nebraska and asked to be informed "whether or not the Half-Breed Reservation had been ceded to the United States and reverted to the public lands."⁸⁴

No response has been found to Captain Stauton's question. Most likely the surveyor general did not have an answer, which typifies the attitude of the United States government. In the case of the Nemaha Half-Breed Tract, the United States government has consistently shown negligence, delay, and outright ineptitude. The Treaty of 1830 did not set a time for surveying and allotting the land and the government did little for twenty-four years. The little the government accomplished was to assign a Baptist missionary to survey the tract and attempt to get a new treaty to abrogate the Treaty of 1830. When the government was finally forced to survey and allot the land, it did move more quickly. But when a conflict arose over the location of the west boundary line of the tract, the government violated the treaty rather than move the white settlers out of the area.

The allotting process was marred by corruption and fraud by government agents. While some statements about corruption are exaggerated, enough evidence exists to show that some fraud took place. The status of the Half-Breed Tract became a political sore point between Republicans and Democrats in Nebraska, resulting in contested elections and county seat fights.

The goal of the Treaty of 1830, which set the Half-Breed Tract, was to give homes to mixed bloods so they could assimilate into white society. But it took thirty years or more for the mixed bloods to get land or money. The mixed bloods sold their land quickly, either for their own profit or due to pressure from white settlers. Thus in less time than it took to get the land, it was almost all in white hands. The Nemaha Half-Breed Tract failed as an endeavor to provide land to mixed bloods and typifies the United States attitude toward treaties with Indians.

NOTES

- ¹"Treaty with the Sauk and Foxes, Etc., 1830," *U.S. Laws and Statutes Indian Affairs, Laws and Treaties*, Vol. 2, ed. Charles Kappler (Washington D.C.: Government Printing Office, 1904), 307.
- ²Berlin B. Chapman, *The Otoes and Missourias: A Study of Indian Removal and the Legal Aftermath* (Np: Times Journal Publishing Co., 1965), 15.
- ³Kappler, *U.S. Laws and Statutes*, 307.
- ⁴Lewis C. Edwards, *History of Richardson County* (Indianapolis: B. F. Bowen & Co., 1917), 136.
- ⁵Chapman, *The Otoes and Missourias*, 15-16.
- ⁶*Ibid.*, 51.
- ⁷Isaac McCoy, *History of Baptist Indian Missions* (Washington D.C.: William Marshall Pub., 1840), 525.
- ⁸Chapman, *The Otoes and Missourias*, 52-53.
- ⁹*Ibid.*, 53-54.
- ¹⁰McCoy, *History of Baptist Indian Missions*, 525.
- ¹¹Chapman, *The Otoes and Missourias*, 54.
- ¹²*Ibid.*, 57.
- ¹³Thomas Harvey to T. Hartley Crawford, 10 September 1845, *Senate Executive Documents*, 29th Cong., 1st Sess. (Serial 470), 535.
- ¹⁴Harvey to William Medill, 4 October 1848, *House Executive Documents*, 30th Cong., 2nd Sess. (Serial 537), 439.
- ¹⁵D. D. Mitchell to Orlando Brown, 13 October 1849, *Senate Executive Documents*, 31st Cong., 1st Sess. (Serial 551), 1068.
- ¹⁶Report #29, Great Nemaha Agency, 29 September 1853, 327-31, Department of the Interior, Report of the Commissioner of Indian Affairs, *Senate Executive Documents*, 33rd Cong., 1st Sess. (Serial 690).
- ¹⁷*Congressional Globe*, 27 April 1854, H1004.
- ¹⁸*Ibid.*, 24 July 1854, H1895.
- ¹⁹Chapman, *The Otoes and Missourias*, 51.
- ²⁰M. Bernadette Reifert, "Origins of Catholicity in Richardson County, Nebraska," (Master's Thesis, Creighton University, 1934), 27.
- ²¹Justus Cozad to John Calhoun, 31 October 1855, Surveyor General Collection, Nebraska State Historical Society (abbreviated NSHS hereinafter), RG 510.
- ²²Michael McManus to Robert Ream, 1, 7 November 1855, Surveyor General Collection, NSHS, RG 510.
- ²³McManus to John Calhoun, 2 December 1855, Surveyor General Collection, NSHS, RG 510.
- ²⁴McManus to Ream, 2 July 1855, Surveyor General Collection, NSHS, RG 510.
- ²⁵Lewis G. Edwards, *History of Richardson County* (Indianapolis: B. F. Bowen and Co., 1917), 125.
- ²⁶Chapman, *The Otoes and Missourias*, 72.
- ²⁷*Nebraska State Journal* (Lincoln), 28 February 1909.
- ²⁸*Nebraska, Executive Proceedings and Official Correspondence*, Annual Report, 1 January 1855. Microfilm at Omaha Public Library.
- ²⁹*Ibid.*, 1 January 1857.
- ³⁰*Nebraska Advertiser* (Brownville), 14 June 1856, p. 3, col. 1.
- ³¹*Ibid.*, 9 August 1856, p. 3, col. 2.
- ³²Chapman, *The Otoes and Missourias*, 67.
- ³³Edwards, *History of Richardson County*, 125-26.
- ³⁴William Goodwin to John Calhoun, 12 June 1857, Surveyor General Collection, NSHS, RG 510.

- ³⁵Chapman, *The Otoes and Missourias*, 68.
- ³⁶Goodwin to Calhoun, 28 August 1857, Surveyor General Collection, NSHS, RG 510.
- ³⁷McManus to General McLean, 14 April 1857, Surveyor General Collection, NSHS, RG 510. McManus changed his mind two years later. When he heard that the boundary was to be resurveyed, once again he volunteered to do it because he wanted it done right. However, he did not get the contract. McManus to W. B. Burnet, 18 February 1859, Surveyor General Collection, NSHS, RG 510.
- ³⁸Chapman, *The Otoes and Missourias*, 67.
- ³⁹*Laws of Nebraska*, 1857, 280.
- ⁴⁰Chapman, *The Otoes and Missourias*, 69.
- ⁴¹*Ibid.*, 71.
- ⁴²*Ibid.*, 72.
- ⁴³*Congressional Globe*, 31 May 1858, S2543.
- ⁴⁴*Ibid.*, 8 June 1858, H2806.
- ⁴⁵*Ibid.*
- ⁴⁶*Ibid.*
- ⁴⁷Chapman, *The Otoes and Missourias*, 75.
- ⁴⁸*Ibid.*
- ⁴⁹U.S. *Statutes at Large*, XI, 1859, 401.
- ⁵⁰*Nebraska Advertiser*, 31 March 1859, p. 2, col. 2.
- ⁵¹Joseph Wilson to Caleb B. Smith, 21 March 1861, *Senate Miscellaneous Documents*, 37th Cong., 2nd Sess., Report #79 (Serial 1124), 41-42.
- ⁵²William Dole to Smith, 27 March 1862, *Senate Miscellaneous Documents*, 37th Cong., 2nd Sess., Report #79 (Serial 1124), 42-43.
- ⁵³Chapman, *The Otoes and Missourias*, 80.
- ⁵⁴*Congressional Globe*, Laws of the United States, 3 March 1863, Appendix, 229.
- ⁵⁵Chapman, *Otoe and Missouri Indians* (New York: Garland Publishing, 1974), 234-35, 359.
- ⁵⁶Chapman, *The Otoes and Missourias*, 63.
- ⁵⁷*Nebraska Advertiser*, 16 August 1856, p. 3, col. 4.
- ⁵⁸Chapman, *The Otoes and Missourias*, 64. The large number of mixed bloods counted is due to the opinion by Attorney General Caleb Cushing, in April 1854. Cushing stated that treaty provisions applied to all mixed bloods alive when the president ordered the allotting, not just those alive in 1830.
- ⁵⁹James W. Denver to William Stark, 4 August 1857, copy at NSHS, MS 726.
- ⁶⁰Chapman, *The Otoes and Missourias*, 65.
- ⁶¹*Nebraska Advertiser*, 1 October 1857, p. 3, col. 1.
- ⁶²Reifert, "Origins of Catholicity in Richardson County, Nebraska," 29-30.
- ⁶³*Falls City Journal*, 4 June 1934, p. 3, cols. 5-7.
- ⁶⁴*Nebraska Advertiser*, 29 October 1857, p. 3, col. 3.
- ⁶⁵*Ibid.*, 6 May 1858, p. 2, col. 3.
- ⁶⁶*Western Guide* (Rulo), 18 June 1858, p. 2, col. 3.
- ⁶⁷Chapman, *The Otoes and Missourias*, 76-77.
- ⁶⁸*Ibid.*, 81-82.
- ⁶⁹*Nebraska State Journal*, 16 July 1937.
- ⁷⁰Nebraska Indian Commission, *Indians of Nebraska: Half-Breed Reserve* (Lincoln, 1978), pamphlet.
- ⁷¹*Nebraska State Journal*, 8 September 1936.
- ⁷²*Nebraska Advertiser*, 21 March 1861, p. 2, col. 1.
- ⁷³*Falls City Broad Axe*, 12 March 1861, p. 2, col. 1.
- ⁷⁴*Laws of Nebraska*, Organic Act, 1855, 22-23.
- ⁷⁵*Nebraska Advertiser*, 11 October 1860, p. 1, col. 2.

⁷⁶U.S. Cong., *House Miscellaneous Documents*, 37th Cong., 1st Sess. (Serial 1115), Document #4, "Nebraska Contested Elections, Daily vs. Morton." Testimony about the Half-Breed Reserve appears on pp. 37-50 and 77-88.

⁷⁷U.S. Cong., *House Reports*, 37th Cong., 2nd Sess. (Serial 1144), Report #69, "J. Sterling Morton vs. Samuel G. Daily," 13-18. The elections of 1857 and 1859 were also contested. While the Half-Breed Reserve was listed in the charges in both cases, no testimony was taken.

⁷⁸*Nebraska Advertiser*, 27 December 1860, p. 2, cols. 1-3.

⁷⁹*Ibid.* The Territorial House ousted A. M. Acton of Richardson County on 20 December 1860, because he had been living in Rulo when elected.

⁸⁰*Falls City Broad Axe*, 8 January 1861, p. 1, cols. 4-5.

⁸¹*Omaha Nebraskian*, 29 December 1860, p. 2, col. 5. Reprinted from the *Omaha Republican*.

⁸²Nebraska, Territorial Legislature, *House Journal*, 21 December 1860, 115-16.

⁸³*Falls City Broad Axe*, 1 January 1861, p. 2, col. 3.

⁸⁴Captain W. S. Stauton to George S. Smith, 19 January 1881, Surveyor General Collection, NSHS, RG 510.