RESOLUTION #223

WHEREAS, the Chicago and Northwestern Railroad Company (CNW) has made claim for a tax refund against this county and sixty-three (63) other counties for tax years 1979, 1980, 1981, and 1982 pursuant to Section 445.60, Code of Iowa; and

WHEREAS, this county and the sixty-three (63) other counties admit that a part of the claimed refunds was due but disputed the basis for computation of the amount of the refund; and

WHEREAS, the CNW filed for a writ of mandamus in the Iowa District Court for Polk County against this county and the sixty-three (63) other counties which was docketed as Equity No. CE-029-16785; and

WHEREAS, this county entered into a coordinated defense of this action together with the other sixty-three (63) other counties; and

WHEREAS, discussions have been held on behalf of this county and the sixty-three (63) other counties in order to resolve these differences for the mutual benefit of all the counties involved.

NOW, THEREFORE, BE IT RESOLVED:

1. This county does hereby ratify and approve the lump sum settlement of One Million Three Hundred Twenty-Five Thousand Dollars ($1,325,000) on behalf of all of the sixty-four (64) counties with the CNW for any and all claimed tax refunds pursuant to Section 445.60, Code of Iowa, for any and all claimed refunds for tax years 1979, 1980, 1981, and 1982, and does further ratify

and approve this county's allocation of **$5,663.47** as its share of this settlement amount.

2. The sum of **$5,663.47** is found and determined to be the amount of taxes erroneously paid by the CNW to this county.

3. The county treasurer shall from the next month's tax payments received that are sufficient to make this payment but not later than November 15, 1989, prior to making the allocations to the various taxing districts in this county, draw a treasurer's draft to the Chicago and Northwestern Railroad Company in the amount of **$5,663.47** and forward the same to the Iowa State Association of Counties (ISAC), 700 - 3rd Street, Des Moines, Iowa 50309. ISAC shall then forward this payment to the CNW and receive a receipt therefore which shall be returned to the county treasurer.

Passed this 11th day of September, 1989.

Don Hendrickson

Chairperson, **Mitchell** County Board of Supervisors

ATTEST:

Sandra Heckstein

County Auditor

Sent copy of this back to ISAC 9-15-89

Gave one copy to Arlene for her files

Home Trust CK #2731 sent Sept. 26, 1989 in the amount of $5663.47

RELEASE AND SATISFACTION

WHEREAS, the Chicago and Northwestern Railroad Company (hereinafter referred to as the "CNW"), has filed a claim for refund of certain property taxes for the tax years 1979, 1980, 1981, and 1982 against the counties of Benton, Blackhawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clay, Clinton, Crawford, Dallas, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Harrison, Howard, Humboldt, Ida, Jasper, Kossuth, Linn, Madison, Mahaska, Marshall, Mitchell, Monona, Monroe, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Wapello, Warren, Webster, Winnebago, Woodbury, Worth, and Wright (hereinafter referred to as "COUNTIES"); and

WHEREAS, the **COUNTIES** have denied that the **CNW** is entitled to these refunds pursuant to Section 445.60, Code of Iowa; and

WHEREAS, the **CNW** has filed suit against the **COUNTIES** in the Iowa District Court in and for Polk County seeking a writ of mandamus against the individual Boards of Supervisors to order this refund which suit has been docketed as Equity No. CE-029-16785 seeking this refund; and

WHEREAS, all of the counties have entered into a coordinated defense of this suit directed by the executive board of the Iowa State Association of Counties (hereinafter referred to as "ISAC"); and

WHEREAS, the parties now have entered into negotiations for a settlement of this lawsuit, and any and all alleged claims by the **CNW** against the **COUNTIES** for a tax refund for the tax years 1979, 1980, 1981, and 1982;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The **COUNTIES** shall pay to the **CNW**, jointly, the sum of One Million Three Hundred Twenty-Five Thousand Dollars ($1,325,000) in settlement of all of the claims for property tax refund by the **CNW** against the **COUNTIES**, jointly and severally, for tax years 1979, 1980, 1981, and 1982, pursuant to Section 445.60, Code of Iowa, in the manner provided for in this agreement.

2. Upon execution of this Agreement, the **CNW** shall cause to be executed and filed in the lawsuit filed by the **CNW** against the **COUNTIES** in the Iowa District Court for Polk County, Iowa, and docketed as Equity No. CE-029-16785, a dismissal with prejudice, each party to assume the court costs previously advanced by that entity and any balance remaining to be shared equally by the parties.

3. **ISAC** shall promptly calculate the amount of this One Million Three Hundred Twenty-Five Thousand Dollars ($1,325,000) to be paid by each of the 64 Counties and notify each county, accordingly. The Board of Supervisors

of each county, by appropriate resolution, shall direct its treasurer to refund that amount to the CNW pursuant to Section 445.60, Code of Iowa. The county treasurer shall then from the next month's tax payments received that are sufficient to make this payment, but not later than November 15, 1989, and prior to making the allocations under the current distribution formula to the various taxing districts in each county, draw a treasurer's draft to the CNW in the amount assessed by ISAC and forward the same to ISAC.

4. ISAC has no personal liability for these payments or any portion thereof. By payment of this settlement the COUNTIES do not acknowledge any liability for these refunds which liability is expressly denied.

5. The CNW does hereby completely release and forever discharge each of these COUNTIES, jointly and severally, and their officials, agents, assigns, fiduciaries, representatives, and all other parties identified in interest therewith from any and all claims, demands, obligations, suits, actions, and causes of action of any kind or nature, known or unknown, at law or equity, which have been asserted or could have been asserted as of the effective date of this release for any and all claims for property tax refunds for the tax years 1979, 1980, 1981, and 1982 pursuant to Section 445.60, Code of Iowa, or any other

appropriate Section of the Iowa Code or under any theory of law. It is specifically understood and agreed by the parties that the payment of the sum of money referred to herein is further an acknowledgment of full and complete satisfaction for any and all claims for refunds of property taxes for the tax years here involved, and that this release and satisfaction agreement covers all such claims, whether known or not, and which may hereafter appear or develop arising from the matters above stated.

6. In further consideration of this sum the **CNW**, its officials, employees, agents, assigns, and transferees do hereby covenant and expressly agree with the **COUNTIES**, jointly and severally, and their officials, employees, agents, assigns, fiduciaries, and all other parties in interest or privity therewith, not to prosecute further these claims or any other new or expanded claims for property tax refunds for the tax years 1979, 1980, 1981, and 1982 and further covenant and expressly agree to forever refrain from continuing or instituting any further claims or causes of action or making any other demand or claim of any nature or kind against the counties, jointly and severally, and their officials, employees, agents, assigns, fiduciaries, or any other party identified in interest therewith for any refund of these property taxes.

7. Each and all of these further acknowledgments and warranties apply to this release and satisfaction agreement:

(a) Each party to this agreement and any and all parties in interest or privity therewith represents and warrants that no other person or entity had or has any interest in the claims, demands, obligations, or causes of action released by such party in this release and acknowledgment of satisfaction agreement and that such party has a sole right and exclusive authority to execute this release and acknowledgment of satisfaction and received the sums referred to in it.

(b) In executing this release and acknowledgment of satisfaction each party and those identified in interest or privity therewith represents to the other that they have relied solely on their own information, knowledge, and belief, and upon the legal advice of their attorney.

(c) This release and acknowledgment of satisfaction agreement shall be governed by and construed in accordance with the laws of the state of Iowa.

8. Each of the individuals executing this release and settlement agreement on behalf of the COUNTIES or CNW expressly warrants to the other party that he or she has the legal authority to execute this agreement.

Dated this 29 day of August, 1989.

EXECUTIVE BOARD OF IOWA
STATE ASSOCIATION OF COUNTIES

By: Albert L. Sorensen

President, Iowa State Association of Counties

Dated this _____ day of ______________________, 1989.

CHICAGO AND NORTHWESTERN
RAILROAD COMPANY

By: ______________________________

Subscribed and sworn to before me this ______________

day of ______________________, 1989.

LAUREN ADAMS
MY COMMISSION EXPIRES
SEPTEMBER 30, 19__

____
Notary Public in and for the
State of Iowa

Subscribed and sworn to before me this ______________

day of ______________________, 1989.

____
Notary Public in and for the
State of Iowa

IOWA STATE ASSOCIATION OF COUNTIES
700 Third Street • Des Moines, Iowa 50309 • (515) 244-7181

DATE: September 1, 1989

TO: Chairperson, Mitchell County Board of Supervisors

FROM: Paul Coates, Executive Director

RE: Chicago & Northwestern Railroad Company v. 64 Counties

The above-captioned case has been settled on behalf of all 64 counties for $1,325,000. This is in accordance with the advice of your county and the other 63 affected counties. The settlement amount represents approximately 40% of the total refund originally claimed.

Each county's share of the settlement amount was determined by calculating the ratio of the total refund claimed from each county to the total refund claimed from all counties, and then applying that ratio to the settlement amount. Your county's share of the settlement amount is $5,663.47.

For your convenience, I have included a proposed resolution to effect this settlement. It is important that the refund is made pursuant to Section 445.60, Code of Iowa. The refund is not to be made out of the general fund. Your treasurer will receive instructions as to how to make the refund from the funds of the taxing jurisdictions that received distributions of the Railroad's taxes. Also, for your information, I have enclosed a copy of the Release and Satisfaction Agreement and a computer run of the amount due from each county.

Please make sure that the treasurer's draft is forwarded to this office so that we can give proper credit to the counties that have paid. This letter, the Release and Satisfaction Agreement, Resolution, and computer run are public records. Any prior conversations and correspondence between your county or any of its officials with Lee Gaudineer, the attorney representing the counties in this case, are subject to the attorney-client privilege and are to be kept confidential.

As provided in the joint defense resolution adopted by your county, once we receive a bill from Mr. Gaudineer for legal services, we will bill your county for an amount based on the percentage that the total refund claimed from your county bears to the total claimed from all counties.

Please call with any questions.

CHICAGO NORTHWESTERN
9-1-89

COUNTY	TOTAL CLAIM	SHARE OF SETTLEMENT	% OF SETTLEMENT AND CLAIM
Benton	44836.48	17835.74	1.35
Blackhawk	83878.08	33366.31	2.52
Boone	93970.82	37381.16	2.82
Bremer	54763.67	21784.73	1.64
Buchanan	16900.62	6722.99	.51
Buena Vista	20745.99	8252.66	.62
Butler	66187.44	26329.05	1.99
Calhoun	5321.15	2116.73	.16
Carroll	77390.46	30785.56	2.32
Cedar	39114.59	15559.60	1.17
Cerro Gordo	132186.06	52583.00	3.97
Chicksaw	23764.81	9453.53	.71
Clay	12012.95	4778.70	.36
Clinton	70143.63	27902.81	2.11
Crawford	51707.96	20569.19	1.55
Dallas	47912.36	19059.31	1.44
Delaware	27726.18	11029.34	.83
Dickinson	4398.40	1749.66	.13
Dubuque	38874.43	15464.07	1.17
Emmet	2612.22	1039.13	.08
Fayette	45595.05	18137.50	1.37
Floyd	14.44	5.74	.00
Franklin	74540.28	29651.77	2.24
Greene	69235.56	27541.58	2.08
Grundy	35600.23	14161.60	1.07
Hamilton	70209.97	27929.20	2.11
Hancock	27461.01	10923.86	.82
Hardin	92772.64	36904.52	2.79
Harrison	102834.20	40906.97	3.09
Howard	13093.62	5208.58	.39
Humboldt	78084.47	31061.64	2.34
Ida	18627.81	7410.06	.56
Jasper	40041.11	15928.17	1.20
Kossuth	49649.90	19750.50	1.49
Linn	77369.54	30777.24	2.32
Madison	38993.32	15511.36	1.17
Mahaska	38957.76	15497.21	1.17
Marshall	173294.68	68935.81	5.20
Mitchell	14237.15	5663.47	.43
Monona	39665.82	15778.88	1.19
Monroe	26192.17	10419.12	.79
OBrien	20888.44	8309.32	.63
Osceola	26328.60	10473.39	.79
Palo Alto	19604.87	7798.73	.59
Plymouth	13473.62	5359.74	.40
Pocahontas	53673.39	21351.02	1.61
Polk	198863.75	79107.07	5.97
Pottawattamie	60210.18	23951.33	1.81

Poweshiek	40799.70	16229.93	1.22
Ringgold	41295.79	16427.27	1.24
Sac	49408.08	19654.30	1.48
Shelby	22111.70	8795.93	.66
Sioux	40769.47	16217.90	1.22
Story	115222.47	45834.96	3.46
Tama	88954.06	35385.51	2.67
Taylor	9074.94	3609.97	.27
Union	40364.11	16056.65	1.21
Wapello	24.21	9.63	.00
Warren	35389.90	14077.94	1.06
Webster	182277.64	72509.19	5.47
Winnebago	29831.96	11867.01	.90
Woodbury	37864.15	15062.18	1.14
Worth	52932.40	21056.26	1.59
Wright	110576.18	43986.69	3.32
	3330858.61	1325000.00	100.00

RIGHT OF WAY ASSURANCE STATEMENT

1 9 9 0

County of MITCHELL

To comply with the provisions of the 1970 Uniform Relocation Assistance and Land Acquisition Policies Act, as amended by Title IV of the Surface Transprotation and Uniform Relocation Assistance Act of 1987, the Board of Supervisors of MITCHELL County furnishes the following assurances to the Iowa Department of Transportation.

1. It is the policy of the Board of Supervisors, Mitchell County to acquire right-of-way in accord with Title III of said 1970 Act, as amended by Title IV of the Surface Transprotation and Uniform Relocation Assistance Act of 1987, and applicable state laws.

2. It is the policy of the Board of Supervisors, Mitchell County to provide relocation assistance benefits in accord with Title II of said 1970 Act, as amended by Title IV, and applicable state laws.

3. The above named County will contact the Iowa Department of Transportation for assistance as needed to assure compliance with applicable laws which are summarized in the instructions entitled "Right-of-Way Acquisition Policies and Procedures."

January 2, 1990
Date Approved

Betty McCarthy
Chairperson, Board of Supervisors

RETURN THIS FORM TO:
Jean Billingsley
Office of Local Systems
Iowa DOT
Ames, IA 50010

NOTE: RETURN BY JANUARY 15, 1990

RESOLUTION

1990

BE IT RESOLVED by the Board of Supervisors of MITCHELL County, Iowa that James E. Hyde, P.E., the County Engineer of Mitchell County, Iowa, be and is hereby designated, authorized, and empowered on behalf of the Board of Supervisors of said County to execute the certification of completion of work and final acceptance thereof in accordance with plans and specifications therefore in connection with all Farm to Market construction projects in this county.

Dated at Osage, Iowa this 2nd day of January, 19 90.

Board of Supervisors

Mitchell County, Osage, Iowa

Betty McCarthy

Chair, Board of Supervisors

Irene Mayer

Con Hendrickson

ATTEST:

By Sandra Heckstein
County Auditor

SEAL

Ames	--	3 copies
District	--	1 copy
Auditor	--	1 copy
File	--	1 copy