

BEFORE THE INDIAN CLAIMS COMMISSION

THE KIOWA, COMANCHE AND APACHE
TRIBES OF INDIANS,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 32

Decided: March 12, 1957

ADDITIONAL FINDINGS OF FACT - ON OFFSETS

23. On December 13, 1955, the Commission made an interlocutory award to the Kiowa, Comanche and Apache Tribes of \$2,067,166.00, under its findings of fact 6 to 22, and opinion of even date. The following findings relate to the evidence, taken August 1 and 2, 1956, with respect to offsets under Section 2 of the Indian Claims Commission Act, 60 Stat. 1049.

24. Defendant claims offsets against the award entered herein of two general types: (1) those which it asserts as direct charges against petitioners, and (2) those which it asserts should be charged on a proportional basis according to the Indian population at the Kiowa Agency in Oklahoma. The direct charges claimed are:

Depredation payments	\$1,561,368.00
Cash payments to indigent Indians	<u>396,844.96</u>
Total direct charges	\$1,958,212.96

The total charges which the defendant asserts should be offset according to population are:

Agricultural aid	\$ 7,523.94
Agricultural implements and equipment	8,116.76
Clothing	15.00
Expenses of Indian delegations	370.31
Hardware, glass, oil and paint	1,019.74
Household equipment and supplies	1,448.29
Indian dwellings	1,429.16
Indigent Indians	34,744.26
Livestock	2,609.01
Mills and shops	966.54
Pay and expenses, agency employees	44,770.62
Provisions	89,970.35
Surveying and allotting	7,395.06
Transportation	<u>9,351.21</u>
Total proportional charges	\$209,730.25

Of the total proportional charges defendant requests offsets of \$153,103.07, which is 73% of said total sum (i.e. the percentage of the total of petitioner tribes to all Indians under the Kiowa Agency).

25. Defendant's basic documentary evidence is as follows:

a. For the sole purpose of showing treaty compliance and for purposes of reference, defendant placed in evidence General Accounting Office Report certified July 20, 1951. This report reflects total disbursements under treaties and otherwise from July 1, 1900 to June 30, 1949, of \$12,096,355.72. It is in evidence as defendant's Exhibit 27. Hereafter, it will be distinguished by referring to it as "original G. A. O. report of 1951."

b. For the purpose of proving offsets defendant placed in evidence, as defendant's Exhibit 26, a revised report of the General Accounting Office, certified April 11, 1956. It covers the period July 1, 1900 to June 30, 1951, and will hereafter be designated simply as Def. Ex. 26 or "G. A. O. report."

c. The item "Indigent Indians: Cash Payments" in disbursement schedules 1, 3 and 4 of the G. A. O. report was brought down to the end of the fiscal year 1956 in a supplementary summary, with a letter signed August 1, 1956, for the Comptroller General. It is in evidence as defendant's Exhibit 30. This will be designated hereafter as "Supplementary Statement" or "Def. Ex. 30."

26. The G. A. O. report was, on its face, revised to furnish the information required on offsets by the more recent decisions of the Court of Claims and this Commission. It is divided into five parts, numbered I to V. All parts are designed to include only disbursements under other than treaty appropriations. Part I covers direct disbursements to the Kiowa, Comanche and Apache Indians in the form of cash payments and also sums paid on depredation judgments. The subsequent parts, II-V, cover disbursements reportedly made jointly to petitioners and other bands or tribes. Each part is divided into sections A and, where appropriate, B. Sections lettered A cover disbursements under vouchers or invoices indicating that the items involved were for issue to the Indians. Under sections lettered B, disbursements are grouped in which the vouchers or invoices do not on their face indicate whether the items were for the Indians or agency, educational or other use. Each part and section is divided into Disbursement Schedules numbered 1-28, which identify the appropriation act and fund, and give in detail the nature and quantity of the items involved by years.

DEPREDEATION PAYMENTS

27. Payments of deprecation judgments involving only the petitioner tribes are summarized in G. A. O. report (Dis. Sch. 2, p. 5), for fiscal years 1901 through 1919 at \$1,563,548.00. Defendant concedes with respect to this sum that it could find no record of a Lipan Band of Comanches against which band a judgment in the sum of \$2180.00 is included in the G. A. O. report (Def. Req. Fdg. 26, subfinding f). Defendant claims, therefore, a net offset of \$1,561,368.00 on the deprecation judgments against petitioners' award.

a. The accounts summarized in this schedule are each based on a certified copy of the judgment of the Court of Claims, a certificate of payment by the auditor for the Department of the Interior and related papers. There are 1104 such accounts involved. Samples of such judgments and accounts are in evidence as defendant's Exhibits 28, 28a, 28b, and 29.

b. The judgments were rendered under the Indian Depredations Act of March 3, 1891, section 6 of which reads (26 Stat. 853):

SEC. 6. That the amount of any judgment so rendered against any tribe of Indians shall be charged against the tribe by which, or by members of which, the court shall find that the deprecation was committed, and shall be deducted and paid in the following manner: First, from annuities due said tribe from the United States; second, if no annuities are due or available, then from any other funds due said tribe from the United States, arising from the sale of their lands or otherwise; third, if no such funds are due or available, then from any appropriation for the benefit of said tribe, other than appropriations for their current and necessary support, subsistence and

education; and, fourth, if no such annuity, fund, or appropriation is due or available, then the amount of the judgment shall be paid from the Treasury of the United States: Provided, That any amount so paid from the Treasury of the United States shall remain a charge against such tribe, and shall be deducted from any annuity, fund or appropriation hereinbefore designated which may hereafter become due from the United States to such tribe.

c. These disbursements were made under identical appropriations for: "Judgments, Indian Depredation Claims," G. A. O. Report, at page 5. The year, date, citation of act and amount appropriated are listed in original G. A. O. Report of 1951, at pages 181 and 182. The pertinent language of the last Act of July 8, 1918, 40 Stat. 821, 837, follows:

* * * said judgments to be paid after the deductions required to be made under the provisions of section six of the Act approved March third, eighteen hundred and ninety-one /26 Stat. 853/ * * * shall have been ascertained and duly certified by the Secretary of the Interior to the Secretary of the Treasury, which certification shall be made as soon as practicable after the passage of this Act, and such deductions shall be made according to the discretion of the Secretary of the Interior, having due regard to the educational and other necessary requirements of the tribe or tribes affected; and the amounts paid shall be reimbursed to the United States at such times and in such proportions as the Secretary of the Interior may decide to be for the interests of the Indian Service: * * *

The pertinent language of all of the preceding appropriations is identical, except the Act of August 26, 1912, 37 Stat. 595, 617-618, which reads as follows:

For payment of judgments rendered by the Court of Claims in Indian depredation cases, * * *; said judgments to be paid after the deductions required to be made under the provisions of section six of the Act approved March third, eighteen hundred and ninety-one, entitled

"An Act to provide for the adjustment and payment of claims arising from Indian depredations," shall have been ascertained and duly certified by the Secretary of the Interior to the Secretary of the Treasury, which certification shall be made as soon as practicable after the passage of this Act; and the amounts paid shall be reimbursed to the United States: * * *.

This 1912 Act included an appropriation for \$719.00 for depredations committed by Comanche Indians before 1891 and the judgment therefor was paid by defendant and, insofar as the record discloses, the defendant has not been reimbursed therefor.

d. The Secretary of the Interior, as required by each of the acts, except that of August 26, 1912, supra, appropriating money to pay the depredation judgments of the petitioners (aggregating \$1,563,548, less \$2180), certified as to each of 1103 of the judgment claims; substantially as follows:

* * * I hereby certify that none of the tribes or nations of Indians against whom the above specified judgments were rendered have any annuities due them from the United States or any other funds due them from the United States arising from the sale of their lands or otherwise, nor is there any appropriations for their benefit other than the appropriation for their current and necessary support, subsistence and education available for the payment of the judgments rendered against them, or out of which the same should be paid, due regard being had to their educational and other necessary requirements.

e. By Article XI of the Act of June 6, 1900, 31 Stat. 672, 680; I Kapp. 704, 712, Congress provided, in acquiring the land here at issue, that none of the cash consideration for said land should be subject to payment of depredation judgments. The article reads, in part, as follows:

That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any judgment that has or may hereafter be rendered under the provisions of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An Act to provide for the adjudication and payment of claims arising from Indian depredations.

The sums claimed by defendant based on expenditures made by the United States in the payment of depredation judgments are denied as offsets.

INDIGENT INDIANS - CASH PAYMENTS

28. Stricken by Order of 7/18/57 (see pg. 315-a).

Stricken by Order of 7/18/57

DISBURSEMENTS FOR INDIANS UNDER
KIOWA AGENCY, OKLAHOMA

29. These items are covered by Part III of G.A.O. report. At pages 13-14 thereof is the record of the population of petitioners and other tribes under the Kiowa Agency, Oklahoma, for the years 1900 through 1945.

By computation from this list, it appears: For the years 1900 through 1926, the percentages of the total of Apaches; Comanches and Kiowa to all Indians under the agency varied from a low in 1906 of 73.71% to a high in 1900 of 75.22%; in 1927 and 1928, it was 75.18% and 75.16%; no percentage is available for the year 1929, and for the years 1930 through 1945 it varied between a low in 1944 of 76.09% to a high in 1931 of 76.99%. Seventy-three (73%) per cent is taken as a minimum and fair proportion of the following disbursements to charge against the petitioners. It would appear from the evidence that in 1928 and thereafter Fort Sill Apache and other Indians were reported under the Kiowa Agency. In view of the findings herein made and the small increase caused by such additional Indians, the percentage figure of 73% is a fair approximation.

Section A, Part III, of the G. A. O. report aggregates items indicated for use of Indians on the fact of the voucher or related papers.

The general summary by classes is totaled in Statement No. 3 (pp. 15-16) at \$141,879.45. From this Disbursement Schedule No. 7 (p. 20) must be deducted. This is a deprecation payment on account of the Kiowa and Wichita tribes in the amount of \$215.00 and defendant conceded that it did not have the essential accounting of the Wichita tribal funds. The figures used in the findings which follow pertain exclusively to items in Section A, Part III, of the G. A. O. report, after the concessions made by defendant at trial and in its proposed findings and brief.

30. Stricken by Order of 7/18/57 (see pg. 315-a).

31. (a) Stricken by Order of 7/18/57 (see pg. 315-a).

(b) The balance of the total sum of \$2,626.62 claimed as an offset under this heading was expended as follows: A sum of \$36.00 in 1904 for 120 bushels of cotton seed issued to the Indians for experimental planting. This item is not a proper offset. The remainder of the total sum, or \$623.63, was expended for seeds between 1931 and 1939. These items, making up the \$623.63, are not proper offsets. During all or most of the period, similar disbursements were being made by the United States for seeds, fruits and fertilizers from the "Apache, Kiowa, and Comanche L^g Fund" (see Def. Ex. 27, Dis. Sch. No. 3). In addition, many of these items are small and appear to have been expended for educational and experimental purposes.

32. Stricken by Order of 7/18/57 (see pg. 316-a)

Stricken by Order of 7/18/57 (see pg. 315-a).

Stricken by Order of 7/18/57 (see pg. 315-a).

33. Clothing - \$15.00. In 1931, the United States expended \$15.00 for the purchase of clothing (p. 63, Def. Ex. 26). The item is otherwise unexplained. The record shows the expenditure of tribal funds for clothing (p. 31, Def. Ex. 27). The defendant's witness admitted there was no evidence of receipt of this item by the Indians (Tr. 1349). The sum sought to be charged here is too small to be considered as for tribal distribution and, in the absence of any proof of receipt by the tribe, will be considered as an individual expenditure and denied as an offset.

34. Expenses of Indian Delegations - \$370.31. The United States spent \$10.31 in 1905 (p. 46, Def. Ex. 26), and \$360.00 in 1939 (p. 71, Def. Ex. 26) under the heading "Expenses of Indian Delegations." Although it would appear that the vouchers showing these expenditures would indicate the tribal membership of the delegates, or at least the tribe or tribes whose business was affected, the United States did not introduce the vouchers into evidence. Where an item would appear to be susceptible of precise delineation which would enable this Commission to find it should properly be charged to one or more particular tribes, we do not think it proper to pro rate the charge among tribes at an agency regardless of the propriety of the charge as an offset. The record shows the expenditure of tribal funds for expenses of Indian delegations. (P. 31, Def. Ex. 27). The defendant has not met its burden of proof on this item and it is disallowed.

35. Hardware, Glass, Oil and Paints - \$944.60
Household Equipment and Supplies - \$1,409.44
Indian Dwellings - \$1,429.16

The United States claims expenditures of \$944.60 for the period 1901, through 1908, listed under the heading "Hardware, Glass, Oil and Paints." The item of household expenses and supplies totalled \$1,374.44 for the period 1901, through 1908; and \$35.00 in 1932. The item of Indian dwellings, in the sum of \$1,429.16, was expended in 1943. There is no evidence in the record to indicate that any of these items were issued to the Indians on a tribal basis. Defendant's witness stated he had no evidence of receipt by the Indians (Tr. 1349). The record shows the expenditure of tribal funds for each one of these items (p. 31, Def. Ex.

27). The agency employees were furnished with living quarters and household necessities by defendant (Tr. 1440). Examination of the items under hardware and household equipment discloses that they are of type and number which would be used for agency buildings. It would appear that if Indian dwellings were furnished in 1943, in the amount indicated, it was on an individual basis and the tribal identity of the individuals should be ascertainable. Under the evidence, all three of these items are denied as gratuities.

36. Indigent Indians - \$34,744.26

Agricultural Aid:	
Digging wells and well equipment	\$ 5,643.28
Seeds, fruit trees and fertilizer	4,537.04
Board	872.50
Clothing	498.56
Fuel	13.87
Household equipment and supplies	181.23
Indian dwellings	10,837.23
Livestock:	
Feed and care of	790.05
Purchase of	230.85
Subsistence	<u>11,139.65</u>
Total	\$34,744.26

The defendant seeks to charge gratuities under the general heading "Indigent Indians," for the items set out above, in the total amount of \$34,744.26. These expenditures are for the period 1930, through 1949, and are sought to be charged against petitioners on a pro rata basis as

distinguished from the cash payment for Indigent Indians, detailed in Finding 28, which are claimed as direct charges.

The testimony of defendant's witness on this item is that the voucher or other evidence of expenditure, available in the General Accounting Office, in most cases gave the name of the individual Indian who was the recipient of the expenditure or service (Tr. 1352). While a few sample vouchers were introduced into evidence to explain the nature of the expenditures (Def. Exs. 32c, 32e, 32f, 321), and though the name of the beneficiary appears on each voucher, in no case has defendant proved that the recipient of the expenditure or item was a member of a petitioner tribe. When, in the nature of things, evidence is available to show tribal membership of a recipient of Government funds but the defendant fails to supply such evidence, we are not justified in charging the costs, pro rata, among several tribes.

37.	<u>Livestock - Feed and Care of</u>	- \$348.10
	<u>Purchase of</u>	127.33
	Total	475.43

The defendant seeks to charge petitioners with the sum of \$348.10, listed under the heading "Feed and Care of Livestock." During the period 1901 through 1908, the United States under this heading purchased shoes for horses and mules, and nails for the same at a cost of \$163.32 (pp. 40, 45, 47, 50, 58, Def. Ex. 26), and spent \$11.30 for coarse salt (p. 45, Def. Ex. 26). During the years 1931 through 1933, a total of \$163.48 was spent for chicken feed (pp. 63, 65, 66, Def. Ex. 26). In 1944, \$10.00 worth of chicken feed was purchased (p. 34, Def. Ex. 26). In 1931, 1932

and 1933, the evidence shows the purchase by the United States of the total of 1,117 baby chicks, 13 hens and one rooster, at a total cost of \$127.33 (pp. 63, 65, 66, Def. Ex. 26). These items may well have been for agency use and are denied as offsets.

38. Mills and Shops - \$552.94

Blacksmith shops	\$491.70 (1904-1908)
Carpenter shops	2.25 (1901)
Machine shops	9.75 (1905)
Tin Shops	<u>49.24 (1901, 1906-1907)</u>
Total	\$552.94

and Expenses of

Pay of Herders and stockmen	\$ 11.67 (1908)
Pay of Blacksmiths	40.00 (1908)
Pay of Butchers	10.00 (1908)
Pay of Carpenters	<u>53.33 (1908)</u>
Total items	\$667.94

The defendant claims credit for the items set out above, in amounts and years as indicated. The defendant has submitted evidence only to show the expenditure of public funds for these items. The nature of the expenditure shows no direct receipt by the tribes. There is no evidence to show that the expenditure of these funds was for the benefit of the petitioners. They undoubtedly were administrative or agency expenditures.

39. Provisions - \$86,509.07

The defendant claims expenditures for provisions in the amount of \$86,509.07 as gratuities. Between 1901 and 1910, the defendant expended the sum of \$85,329.47 for such, and between 1930 and 1940 expended the sum of \$1,179.60 for the same purposes. The yearly breakdown is as follows for the years 1901 through 1910:

1901	\$27,553.11
1902	21,310.32
1903	8,288.57
1904	6,232.06
1905	4,417.40
1906	4,876.57
1907	478.83
1907	3,532.46
1908	3,685.39
1909	1,939.85
1910	3,014.91

In fiscal year 1901, the sum of \$27,553.11 for provisions was expended for such items as 146,000 lbs. of flour, 703,086 lbs. of beef cattle, 52,500 lbs. of flour and 36,035 lbs. of corn. In fiscal year 1902, provisions included, among others, such items as 108,991.826 lbs. of beef cattle and 89,750 lbs. of flour. Expenditures for these provisions, together with purchases of coffee, sugar, salt and bacon, were made yearly between 1901 and 1910 inclusive, although following 1902 the disbursements were considerably less than before.

On September 1, 1902, the agent at the Kiowa Agency reported on the general condition of the Indians as follows: (Pet. Ex. 143-1(b))

The larger number live in houses on their allotments and are manifesting considerable pride in the ownership of individual homesteads, and in very many cases their houses are furnished well with comforts and conveniences which equip civilized home life. * * * There are no vagabond beggars among these Indians. In some way, even the poorest among them make out with what they receive from the income of their lands, so that no real suffering from poverty is known among them.

The Kiowa, Comanche and Apache, as a rule, appreciate the good fortune that has befallen them in the opening of the surplus lands of their reservation to settlement by whites, and realize the justness of being thrown for the most part upon their own resources for livelihood. Congress at its last session made no appropriation for their support during

the ensuing fiscal year, and they understand that they are expected to support themselves through their own efforts upon their allotments and the money derived from the sale of their surplus lands under act of June 6, 1900, and the rents received from their pasture reserves which are held in common.

Defendant is entitled to offsets for 73% of the sums expended for provisions for the fiscal years 1901 and 1902 only, during which period a total of \$48,863.43 was disbursed, or \$35,670.30. The remaining sum of \$1,179.60 expended for provisions from 1930 through 1940 consists of small items mostly for miscellaneous provisions and is not a proper offset.

39(a) Added by Order of 7/18/57 (see pg. 315-a).

40. Transportation

Defendant claims expenditures totaling \$29.07 for transportation of agricultural implements and equipment. This sum was expended between the years 1912-1921, and after such articles were made available for sale to the Indians on credit. These items are not proper offsets. A sum of \$48.05 is claimed by defendant for the transportation of clothing over a period of years. No explanation as to the use planned for such clothing or its distribution is made by defendant. The items making up the sum of \$48.05 for transportation of clothing are denied as offsets. The expenditure of the sums of \$201.88 for transportation of hardware, glass, oil, and paints, \$212.49 for the transportation of household equipment and supplies, and \$8.00 for transportation of feed for livestock are denied as proper offsets (see Findings 35 and 37). In 1918, the sum of \$12.80 was expended for the transportation of 1293 pounds of kerosene, and in 1920, the sum of \$14.24 was expended for the transportation of the same product. The cost of the fuel itself is not claimed as an offset. The

item of \$27.04 for transportation is denied as an offset. In 1920, the sum of \$2.51 was expended for the transportation of 305 pounds of seed. This item is not a proper offset. (See Finding 31(b)). The items making up the sum of \$54.64 for transportation of provisions over a number of years do not indicate tribal as distinguished from agency or individual use and are denied as offsets.

DISBURSEMENTS KIOWA AGENCY WHERE INDIAN
OR TRIBAL USE IS NOT INDICATED ON THE
FACE OF THE VOUCHERS OR RELATED PAPERS

41. These items are segregated under Section B, of Part III, of the G. A. O. report. Defendant claims a total of \$68,065.80 was expended under this heading for the Indians of the Kiowa Agency from 1901 to 1947, and asks that 73% of said sum, or \$49,688.03, be allowed as an offset.

The types of expenditures here urged are as follows:

Agricultural Aid	\$ 19.80
Agricultural Implements and Equipment	1,105.34
Hardware, Glass, Oil and Paint	75.14
Household Equipment and Supplies	38.85
Livestock	2,133.58
Mills and Shops	413.60
Pay and Expenses, Agency Employees	44,655.62
Provisions	3,461.28
Surveying and Allotting	7,395.06
Transportation	8,767.53

42. The expenditure of \$19.80 for agricultural aid was made for the purchase of 53½ gallons of lubricating oil in 1901. This may well have been an agency expense. It is not a proper offset. Of the items under "Agricultural Implements and Equipment," the sum of \$533.07 was expended in 1901 for parts for mowing machines. In 1901, ten mowing machines were purchased and defendant has been allowed an offset for the machines (Finding 32). In 1909, the sum of \$143.79 was expended for agricultural implements and equipment and a sum of \$428.48 in 1910, making a total of \$1,105.34 under this heading. It is not possible to determine from the record whether these items were used by the agency, issued to the Indians or sold to the Indians on credit, and, therefore, are not proper offsets. Hardware, glass, oil and paint items in the sum of \$75.14 and household equipment and supplies in the sum of \$38.85 appear to be most likely agency expenditures and are denied as an offset. (See Fdg. 35).

43. Stricken by Order of 7/18/57 (see pg. 315-a).

44. Defendant claims offsets totaling \$413.60 in the G. A. O. report under "Mills and Shops." This sum includes expenditures for the blacksmith, carpenter, machine and tin shops. These shops no doubt were

maintained primarily as an agency or administrative service and the items are not proper offsets.

45. Offsets in the total amount of \$44,655.62 are claimed by defendant for pay and expenses of herders, stockmen, blacksmiths, butchers, carpenters, harness-makers and general mechanics. These items were expended primarily for agency or administrative services and are not proper offsets.

46. A total of \$7,395.06 is claimed as offsets by defendant for surveying and allotting expenditures. Of this total, \$3,807.72 was expended in 1901 and the remainder in 1907. There appears to be no evidence of record as to what lands were being surveyed and allotted to incur these items of expenditure. During the year 1901, the United States was surveying and allotting lands to members of petitioner tribes as required by the Act of June 6, 1900, under an appropriation act of January 4, 1901, 31 Stat. 727 (Def. Ex. 27, p. 34). In the absence of proof as to whether the lands for which the items of expenditure were made were those of petitioner tribes, the items are not proper offsets.

47. Stricken by Order of 7/18/57 (see pg. 315-a).

Stricken by Order of 7/18/57 (see pg. 315-a).

Stricken by Order of 7/18/57 (see pg. 315-a).

DISEBURSEMENTS THROUGH WESTERN OKLAHOMA
CONSOLIDATED AGENCY

48. These are summarized in G. A. O. Report, Part IV, Sections A and B, Disbursement Schedules 25-26 (pp. 160-165). Defendant concedes in its brief that the sums involved, totaling \$1,623.59, are too small to prorate through four consolidated agencies and the numerous tribes involved. (G. A. O. Report, p. 159).

DISBURSEMENTS THROUGH ANADARKO AREA OFFICE,
SOUTHERN PLAINS AGENCY

49. Here the G. A. O. Report, Part V, pp. 166-169, summarizes two categories, totaling \$102,894.04. Defendant conceded at the trial, that after a field investigation, it could not supply evidence to support an allocation. (Tr. 1265).

SUMMATION

50. Stricken by Order of 7/18/57 (see pg. 315-a).

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner