

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF)
 OKLAHOMA AND AMOS ROBINSON SKYE)
 ON BEHALF OF THE WEA NATION,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 314, Amended

EXPLANATORY STATEMENT

In the proceedings in which Docket 314 was consolidated with Dockets 65, 66, 99, 289, 313 and 338, this Commission determined that the petitioners herein, the Peoria Tribe of Indians of Oklahoma, had the right and capacity to bring and maintain suits under the Indian Claims Commission Act as the representative of and in behalf of the Peoria, Kaskaskia, Wea, and Piankashaw Indian tribes with respect to any claims which they may have before this Commission (4 Ind. Cl. Comm. 223.)

In those proceedings in which Docket 314 had been consolidated with Docket 67 and others, this Commission found that (1) the Wea Tribe of Indians had a recognized title to 815,000 acres within the Royce Area 99, which is a large body of land located principally in the State of Indiana; that the Wea tribe had ceded to the United States under the treaty of October 2, 1818, all their right, title and interest to Royce Area 99, and (2) that as of October 1818, Royce Area 99 had a fair market value of \$1.15 per acre. (2 Ind. Cl. Comm. 617; 9 Ind. Cl. Comm. 1).

By a stipulation filed February 24, 1956, the parties herein agreed to be bound by the Commission's determinations in the Consolidated Docket 67 with respect to the 1818 fair market value of Royce Area 99. As a result the Wea tribe of Indians is entitled to a judgment of \$937,250.00 less proper offsets.

By this Commission's order of January 9, 1958, the several claims of the Wea tribe of Indians, as set forth in the original petition filed in Docket 314, were ordered severed, and these were assigned separate docket numbers. Thereafter and in compliance with said order, the Peoria tribe filed the amended petition herein, Docket 314 Amended, setting forth the extent of the Wea claims to Royce Area 99 arising under 1818 Wea treaty of cession.

Thus, the present proceedings in Docket 314 Amended involve two questions for decisions; namely, (1) the value of the consideration paid to the Wea tribe of Indians for its 1818 cession of all right, title, and interest to Royce Area 99, and (2) the amount of any payments on the claim or other offsets which may be credited to the defendant against the Wea judgment entered herein.

FINDINGS OF FACT

The Commission makes the following findings of fact.

1. By the treaty of October 2, 1818 (7 Stat. 186) at St. Mary's the Wea tribe of Indians ceded to the United States "all the lands claimed and owned by the said tribe within the limits of the State of Indiana, Ohio, and Illinois" with the exception of a small reservation on the Wabash River

identified as Royce Area 111. Article 5 of said treaty provided that in consideration of this cession,

" . . . the United States agree to pay to the said Wea tribe of Indians, one thousand eight hundred and fifty dollars annually, in addition to the sum of one thousand one hundred and fifty dollars (the amount of their former annuity,) making a sum total of three thousand dollars; to be paid in silver by the United States, annually, to the said tribe, on the reservation described by the second article of this treaty."

2. By the treaty of August 11, 1820, (7 Stat. 209) the Wea tribe of Indians agreed to cede to the United States the reservation on the Wabash which was reserved to them under Article 2 of the 1818 treaty, for the sum of,

" . . . five thousand dollars, in money and goods."

It was also provided that, in contemplation of the Wea removal from the Wabash,

" . . . the annuity secured to the Weas, by the treaty of Saint Mary's above mentioned, shall hereafter be paid to them at Kaskaskia, in the state of Illinois."
(Art. 3.)

3. On October 29, 1832, the United States concluded a treaty with the Wea and Piankashaw tribes of Indians whereby the said tribes ceded and relinquished to the United States forever,

" . . . all their right, title, and interest to and in lands within the States of Missouri and Illinois - hereby confirming all treaties heretofore made between their respective tribes and the United States, and relinquishing to them all claim to every portion of their lands which may have been ceded by any portion of their said tribes."
(Art. 1, 7 Stat. 410)

Under Article 2 of said treaty the United States thereupon ceded or granted jointly to the Piankashaw and Wea tribes as their permanent residence,

" . . . two hundred fifty sections of land within the

limits of the survey of the lands set apart for the Piankashaws, Weas, and Peorias. . ."

Compensation to the Wea tribe of Indians for improvements made upon lands of the United States from which they had removed was provided for under Article IV of the treaty. It was also provided that the United States would give additional assistance to the part of the Wea tribe still living in Indiana who desired to join the main body of Weas on their new reservation, as well as supplying these Indians with provisions for one year after their arrival.

4. Under the terms of the Treaty of May 30, 1854, (10 Stat. 1082) with the Kaskaskia, Peoria, Wea and Piankashaw tribes of Indians, it was agreed that thereafter the four enumerated tribes would be recognized and regarded as a single consolidated tribe. After reserving individual allotments of 160 acres per Indian, the united tribe ceded to the United States all their surplus reserved lands which were granted to them under the two treaties of October 27, 1832 (Kaskaskia and Peoria tribes, 7 Stat. 403) and October 29, 1832 (Piankashaw and Wea tribes, 7 Stat. 410). It was also agreed under Article 6 of the 1854 treaty that the consolidated tribes would relinquish all present annuities and all other claims under former treaties,

". . . and in consideration of the relinquishments and releases aforesaid, the United States agree to pay to said United tribe, under the direction of the President the sum of sixty-six thousand dollars in six annual installments. . ."

5. In fulfilling its obligations pursuant to the terms of the 1854

treaty, the United States appropriated and disbursed to the united tribe of Kaskaskias, Peorias, Weas and Piankashaws the sum of \$70,820.00. Of this amount the sum of \$34,478.16 can be allocated to Weas as representing the capitalized value of their annuity granted under the 1818 Wea treaty in consideration of the Wea cession made therein, and as such, said amount is a proper offset for the defendant to credit as a payment on the claim against any judgment rendered in behalf of the petitioners in this case. (Def. Ex. 1-A, GAO report covering amounts disbursed pursuant to the treaty of October 2, 1818, and others.)

6. By virtue of the 1818 and 1820 treaties of cession, the Wea tribe of Indians disposed of all their tribal lands. Between 1820 and 1832, the Weas acquired no additional tribal lands. Instead these Indians in company of others took up residence from time to time on lands owned and belonging to the United States. With respect to the joint grant of the 250 sections of Kansas land made by the United States to the Wea and Piankashaw tribes under the provisions of the 1832 treaty, the Commission finds that, insofar as the Wea tribe of Indians is concerned, said grant was without consideration, being a gratuitous act made without benefit of treaty or other obligation.

The Commission finds further that the defendant in good conscience is entitled to set off the value of the Wea portion of the 1832 Kansas grant against any award to the petitioners with respect to their claim under the 1818 treaty, and the value of said gratuitous offset shall be either the fair market value of the 1832 Kansas grant to the Weas as of

that date, or said offset may be assigned such reasonable value as shall be agreed upon between the parties herein, subject to approval of the Commission.

7. Between the years 1819 and 1832 inclusive, the defendant alleges that without treaty or contractual obligation it expended gratuitously for the direct benefit of the Wea tribe the sum of \$1,111.94. As evidence of this payment, and all other claimed gratuities hereinafter treated, the defendant has introduced as "Defendant's Exhibit 2-A" a 1956 GAO report, hereinafter referred to as the Report, which not only covers gratuitous disbursements to the Wea tribe directly, but also to the confederated tribe of Peorias, Kaskaskias, Weas, and Piankashaws, during the period August 3, 1795 to June 30, 1951.

(a) An analytical breakdown of the various disbursement schedules in Section D of the Report covering the above claim payment shows the following segregated amounts:

Agricultural implements and equipment	\$ 32.00
Clothing	33.17
Expense of Indian delegations	41.00
Household equipment and supplies	2.00
Hunting and fishing equipment	57.84
Indigent Indians - funeral expenses	75.88
Livestock - feed and care of	19.31
purchase of	81.00
recovery of strayed or stolen	5.00
Mills and shops - blacksmith's shops	39.54
Provisions	<u>725.20</u>
Total	\$1,111.94

(b) The expenditure of \$32.00 for agricultural implements and equipment was made during the calendar year 1820 and was for the purchase of 1 bridle and 2 saddles. In the absence of evidence in the record

indicating it is other than an individual or agency expense, the item is disallowed as a proper offset. In like manner the \$33.17 item for clothing is also disallowed as an offset since the few items listed do not without further explanation suggest a tribal benefit. The \$2.00 expenditure for household equipment and supplies is also not a proper offset. The defendant is allowed to credit the expenditure of \$41.00 for expenses of Indian delegations, and \$57.84 expenditure over a four year period for hunting and fishing equipment. In light of the recent Court of Claims decision in the case of the United States v. Seminole Nation, June 3, 1959, the expenditure of \$75.88 for the funeral expenses of indigent Indians is allowed as a proper offset. Under the category of "Livestock", the \$81.00 expenditure for the purchase of 2 horses in 1828 is not a proper offset since the disbursement was made under the appropriation entitled "Horses for sub-agents, Interpreters, and Blacksmiths, at Peoria and Iowa Sub-agencies, and for other purposes," and most probably is an agency expense (p. 64, Pet. Ex. 2-A). The \$5.00 item for the recovery of one horse which strayed or was stolen is not a proper offset, nor is there evidence which could support the \$19.31 expenditure for the feeding and caring of seven horses during the calendar year 1819 and 1825 as a tribal benefit. Therefore this item is disallowed as an offset. In 1828 and 1831 there was a total expenditure of \$39.54 for the Blacksmith's shop for purchasing horseshoes, nails and iron. This expenditure would appear to be an agency expense and therefore is not a proper offset. The \$725.25 expenditure listed to the Weas under "Provisions"

is a total of many separate charges covering the period from 1820 through 1831 and an examination of the items contained therein shows the expenditure to be of a tribal benefit and therefore an allowable offset.

(c) Of the total offsets claimed in the schedule set forth in paragraph (a) above, the defendant is entitled to set off the amount \$899.97.

8. Between the years 1820 and 1832, the defendant claims that gratuitous expenditures were made jointly to the Wea, Peoria and Piankashaw tribes totalling \$528.26 of which amount the proportional share chargeable to the Wea tribe of Indians is \$209.30.

(a) Defendant's schedule of expenditures as set forth in Section E of the Report is as follows:

<u>Peoria, Piankashaw and Wea Tribes - % of Weas, 38.</u>		
Agricultural Implements and equipment	\$ 12.00	
Clothing	32.88	
Expense of Indian delegation	102.50	
Indigent Indians - funeral expenses	30.50	
Mills and Shops - Blacksmith Shop	81.25	
Provisions	198.63	
		\$457.76
<u>Peoria and Wea Tribes - % of Weas 60.</u>		
Expenses of Indian Delegations		13.50
<u>Piankashaw and Wea Tribes - % of Wea 48</u>		
Expenses of Indian Delegations		13.00
Hunting and fishing equipment		44.00
Total	\$528.26	

(b) During this period the defendant claims that the population statistics for these tribes show an average of 200 Weas, 120 Piankashaws and 150 Peorias and Kaskaskias. Petitioner has no objection to these

figures and this commission finds them to be a reasonable estimate of the populations of these tribes (P. 115, Def. Ex. 2-A).

(c) Upon examination of the items covered in the corresponding schedules as set forth in Section E of the Report, the Commission finds that the offsets claimed in paragraph (a) above are proper offsets with the following exceptions.

The \$32.53 expenditure for clothing was made for 1 coat and 12 military feathers and appears to be for individual benefit and therefore is not a proper offset. The \$81.25 expenditure for the Blacksmith shop for 130 pr. horseshoes is more properly an agency expense and therefore not a proper offset.

The Commission therefore finds that total allowable proratable offsets chargeable to Weas from the above schedule is \$165.98.

9. As shown in Section F of the Report, between 1833 and 1854, the United States made certain expenditures under other than treaty appropriations collectively and separately to the Kaskaskia, Peoria, Pianksahaw, and Wea tribes of Indians.

(a) During the calendar years 1840, 1841, 1843, 1845, and 1846, the defendant expended gratuitously for the direct benefit of Wea tribe some \$618.50 on provisions for such items as corn, flour, beef, pork, and salt. (p. 116, Def. Ex. 2-A). This amount may be properly offset by the defendant.

(b) A voucher made out jointly to the Piankashaw and Wea tribes, shows an expenditure by the United States in 1840 of \$30.00 on provisions

for 400 lbs. of beef, 300 lbs. flour, and 12 lbs. of tobacco (p. 116, Def. Ex. 2-A). The size of the quantities purchased are indicative of tribal use and therefore the Weas proportional share amounting to \$18.00 is allowed as a proper offset.

(c) In 1843 the United States expended \$3.00 for a 100 lbs. of flour for the "Peoria, and Wea tribes" (p. 123, Def. Ex. 2-A). Under the circumstances this quantity seems insufficient to be of joint tribal benefit and accordingly is not a proper offset.

(d) In 1843 the United States expended gratuitously \$84.00 for the joint benefit of the four tribes in the purchase of 1,200 lbs of bacon and salt pork (p. 127, Def. Ex. 2-A). The Defendant may offset the proportional share of the Weas in the amount of \$33.60. Additional joint expenditures of the four tribes of \$10.00 in 1846 for corn (p. 125, Def. Ex. 2-A), and \$3.00 for 6 bushels of corn in 1836 for the feed and care of livestock (p. 126, Def. Ex. 2-A) are too small to prorate as tribal benefits and are disallowed as offsets.

10. In 1854 and 1855, as shown in Section G of the Report, the United States disbursed to the confederated tribe of Peoria, Kaskaskia, Wea, and Piankashaw Indians under the appropriation "Extinguishing title west of Missouri and Iowa," the sum of \$1,044.57 covering the "Expenses of Indian delegations." (p. 135, Def. Ex. 2-A). Section 2 of the Act of March 3, 1853 (10 Stat. 226, 238) authorized the President of the United States,

". . . to enter into negotiation with the Indian tribe west of the States of Missouri and Iowa for the purpose of securing the assent of said tribes to the settlement of the citizens of the United States upon the lands

claimed by said Indians, and for the purpose of extinguishing the title of said Indian tribe, in whole or in part to said lands; and that, for the purpose of carrying into effect the provisions of this section, the sum of fifty thousand dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated."

The above expenditure was made during the pre-1854 treaty negotiations with the united tribe, which activity was part and parcel of the overall negotiations being conducted by the United States with the other neighboring tribes west of the Mississippi. As such, this expenditure was made for the benefit of the United States and therefore it is not a proper offset. See, The Prairie Band of Potawatomi Indians, et al., v. United States, 7 Ind. Cl. Comm. 170; The Absentee Shawnee Tribe v. United States, 6 Ind. Cl. Comm. 377.

11. In 1864 the United States disbursed \$100.00 for the benefit of the united Tribe under the appropriation "Contingencies, Indian Department" for the expense of Indian delegations (p. 133, Def. Ex. 2-A). In 1872 an additional \$442.75 was disbursed to the United Tribe under the appropriation "Expense of Indian Delegations visiting Washington in 1870." (P. 134, Def. Ex. 2-A). The petitioners do not contest defendant's claim that these expenditures are proper offsets and since the Commission finds that these disbursements were for the benefit and convenience of the tribe, they are allowed as proper offsets. Of these expenditures 40 per cent is chargeable to the Wea tribe of Indians as its proportional share. Defendant may therefore offset \$217.10 for expenses of Indian delegations.

12. During the period from January 1, 1837 to June 3, 1870, the Kaskaskia, Peoria, Piankashaw, and Wea Indians were under the jurisdiction

of the Osage River Sub-Agency. Section H of the Report covers disbursements made during these years. In 1841 the United States disbursed \$200.04 to the Osage Agency for provisions (rations) and during the fiscal years 1845, 1846, and 1847, the United States disbursed to the Osage Agency \$827.86 for provisions (corn, beef and flour), storage and services. (Def. Ex. 2-A, pp. 136-145). The quantities involved are indicative of a tribal benefit. During these same years, the Weas constituted about 6 per cent of the total population which was quartered at the agency. Having apparently participated in this tribal benefit, the defendant may properly offset \$61.67 as the Weas' proportionate share.

13. From July 1, 1870 to August 31, 1947, the Confederated tribe of Peoria, Kaskaskia, Piankashaw, and Wea Indians, along with other tribes, was under the jurisdiction of the Quapaw Agency. As set forth in Section I of the Report defendant claims gratuitous expenditures for provisions and other miscellaneous items for the benefit of the Quapaw Agency Indians in the sum of \$6,524.94 of which amount 5% or \$326.00 is properly chargeable to the Wea Indians.

(a) Included in the items above are certain claimed offsets which were also claimed by the defendant in Docket 14, The Quapaw Tribe of Indians, et al., v. United States, 1 Ind. Cl. Comm. 644. These disbursements were found by the Commission to be proper offsets and these findings were approved by the Court of Claims on appeal. The Quapaw Tribe of Indians, et al., v. United States, 128 C. Cls. 45.

These expenditures are: \$2.87 for "Expenses of Indian Delegations" (1886); \$9.00 for "Hunting and Fishing Equipment" (1886); \$54.44 for

"Board" and "Funeral Expense" of indigent Indians (1881-1883); and \$5.00 for "Surveying and Allotting" (1907). Having received full credit for these expenditures in Docket 14, the defendant cannot claim them in the instant case. They are therefore disallowed.

(b) The Court of Claims in the aforementioned Quapaw Case also approved total gratuitous expenditures of \$5,055.37 for provisions made by the United States during this period to Indians at the Quapaw Agency. The Quapaw Indians in that case were charged their proportionate share of the total expenditure.

The defendant now seeks to charge the Wea tribe of Indians with their proportionate share of the same expenditure as a proper offset. This offset is allowed and the Wea Indians are charged with 5% of the total expenditure, or \$252.77 the percentage being determined on the basis of Wea population at the agency during this period.

(c) In the Quapaw case the Court of Claims approved as a proper offset total government expenditures of \$1,098.06 made during the period of 1878 to 1890 for "Transportation of Indian supplies," of which amount the Quapaws were charged with their proratable share. The same offset is sought to be prorated herein with respect to the Wea tribe of Indians. However, in this case the defendant may offset against the Weas only their 5% proratable share of \$539.05, being the total expenditures for the years 1878, 1880, 1881, 1882, 1886, 1887, 1889, and 1890, or an offset of \$26.95. It is for these years that the defendant claimed and was allowed an offset of expenditures for provisions and supplies. Having made no additional offset claim for expenditures or provisions and supplies

covering the other years during this period, the defendant may not offset costs for the transportation thereof, since the Commission is unable to determine whether the provisions or supplies involved would be proper offset items.

14. Section J of the Report shows that during the fiscal years 1906-1907, the United States disbursed from other than treaty appropriations \$875.00 to pay for the salary of an additional blacksmith and wheelright at the Quapaw Agency. The money was paid out of an appropriation entitled "Contingencies, Indian Department" (p. 171, Def. Ex. 2-A). Because the Quapaw Agency was charged with the responsibility of attending to the needs and wants of the numerous tribes under its jurisdiction, the Commission finds that the maintenance and support of such a service, becomes an integral and necessary function of an efficient agency operation. As such the Commission finds that the necessary governmental expenditures in behalf of such an activity are more akin to and consistent with the Agency or an Administrative expense. Therefore the Commission disallows this item as a proper offset.

15. The course of dealings between plaintiffs and defendant has not been such that the defendant is prohibited from setting up against the award previously entered against the United States any credits or offsets which it may have that are not precluded by section 2 of the Indian Claims Commission Act.

16. In conclusion, the Commission finds that the defendant may credit against the award of \$937,250.00 entered herein in favor of the Wea Indians, the following:

(a) The consideration received by the Wea tribe of Indians from the United States for the cession of all their right, title, and interest to Royce Area 99 under the Treaty of October 2, 1818 (7 Stat. 186) in the amount of \$34,478.16.

(b) The 1832 fair market value of 125 sections of the 250 section grant of Kansas land made jointly to the Piankashaw and Wea tribe of Indians under the treaty of October 29, 1832 (7 Stat. 410), or in lieu thereof, an amount which the parties herein may agree and stipulate as being the reasonable value of said offset, subject to the approval of the Commission.

(c) The sum total of the gratuitous expenditures found by the Commission to be proper offsets as set forth in Findings 7 through 9 and 11 through 13, in the amount of \$2,294.54.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner