

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE)
LOWER BRULE RESERVATION, SOUTH)
DAKOTA,)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant,)

Docket No. 78

Decided: October 27, 1961

ADDITIONAL FINDINGS OF FACT

The following additional findings of fact are supplemental to the findings numbered 1 through 23 made in the prior decisions of this Commission in this case (2 Ind. Cl. Comm. 189, reversed 125 C. Cls. 439; 4 Ind. Cl. Comm. 250).

24. Pursuant to the terms of the Act of March 2, 1889, 25 Stat. 888, 1 Kapp. 328, all lands lying outside of the separate reservations therein described were opened for disposition at prices graduated from \$1.25 to 50 cents per acre during the ten-year period February 10, 1890 to February 10, 1900, and all lands undisposed of at the end of ten years were accepted and paid for by the United States at 50 cents per acre.

Since the error in surveying and monumenting the southern boundary of the separate reservation described for the Lower Brule Sioux was not discovered, much less determined, until many years later, the acreage excluded along the southern boundary was treated as a part of the lands subject to disposition and acceptance under the 1889 Act.

25. Between February 10, 1890 and June 30, 1925, the defendant made advances to the plaintiffs against the prospect of reimbursement from the proceeds of disposition of lands opened for homestead and disposal under the 1889 Act, 25 Stat. 888.

26. This Commission decided that, of the acreage excluded on the south side of the reservation (25,968.24 acres), the following disposals were made between February 10, 1890 and February 10, 1900:

<u>Acres</u>	<u>Price Per Acre</u>	<u>Amount</u>	<u>Time Interval</u>
276.20	\$1.25	\$ 345.25	2-10-1890 to 2-10-1893
922.46	.75	691.85	2-10-1893 to 2-10-1895
<u>652.80</u>	.50	<u>326.40</u>	2-10-1895 to 2-10-1900
Totals 1,851.56		\$1,363.50	

27. Pursuant to the Special Jurisdictional Act dated June 3, 1920, 41 Stat. 738, IV Kapp. 270, the Sioux Tribe and each of the constituent Sioux groups including the Lower Brules sued for an accounting (a) of the proceeds received from lands disposed of during the 10-year period (1890-1900) and (b) 50 cents per acre for all lands unsold as of February 10, 1900, and accepted by the United States.

28. The Court of Claims first determined that the total acreage lying outside the described separate reservations aggregated 9,261,592.62 acres and that, for both land categories, the Tribe was entitled to a total credit of \$5,307,655.87 (97 C. Cls. 391, 396-7). The Court of Claims next made a complete accounting and stated the account between the parties as of June 30, 1925 (the cut-off date of the General Accounting Office Report), 105 C. Cls. 658.

29. By virtue of the Court of Claims crediting the Sioux Tribe with \$5,307,655.87 as the proceeds from the land disposals under the Act of March 2, 1889, the Lower Brule Sioux have received their pro rata share of the 1,851.36 acres of the excluded lands on the south side of the reservation disposed of between February 10, 1890 and February 10, 1900. Based upon the population of the Lower Brule Sioux of 1,019 in relation to the total Sioux population of 20,780, the pro rata share of the Lower Brule Indians is 4.903% of \$1,363.50, or \$66.85. For the balance of the excluded lands, or 24,116.68 acres, which under the 1889 Act were to be accepted by the United States and paid for at the rate of 50 cents per acre the Sioux Tribe received credit at that rate and the Lower Brules pro rata share of \$12,058.34, is \$591.22. Defendant is therefore entitled to an aggregate credit of \$658.07 against the gross amount of \$19,476.18 which the Commission found the Lower Brule Sioux were entitled to recover, less offsets and counter-claims, leaving a balance of \$18,818.11.

30. Section 5 of the Act dated June 18, 1934, 48 Stat. 984, provides in part:

The Secretary of the Interior is hereby authorized, in his discretion to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, * * * including trust or otherwise restricted allotments whether the allottee be living or deceased, * * * for the purpose of providing land for Indians.

For the acquisition of such lands, * * * and for expenses incident to such acquisition, there is hereby authorized to be appropriated out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: * * *.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

Between March 11, 1936 and August 15, 1950, the Secretary of the Interior, pursuant to the foregoing Act, acquired for the Lower Brule Sioux several tracts of land at a total expenditure of \$157,404.46.

31. In support of this offset the defendant introduced in evidence, as defendant's exhibit 04, photostats of the 57 original vouchers in the possession of the General Accounting Office covering all of these purchases. Each voucher shows: voucher number, date of acquisition, legal description of the property, acreage, price per acre, total cost, government check number, date of issue, amount, and the vendor's signature acknowledging receipt of payment for the land. Each voucher states that the land was purchased under the authority contained in section 5 of the foregoing Act, that, as there directed, title was taken in the name of the United States in trust for the Lower Brule Sioux, and shows the volume, page and county where the deed was recorded.

32. The summary statement or tabulation which forms a part of defendant's exhibit 04 lists each of the 57 vouchers by its number and dollar amount. The tabulated total of the face amount of the vouchers is there shown as \$157,593.89, or \$189.43 more than the \$157,404.46 which had been alleged as offsets by the defendant. The reduction of \$189.43 was explained by the defendant's witness, Joe B. Wilson,

Assistant Chief, Indian Tribal Branch, General Accounting Office, as follows (Tr. 23-24):

Voucher No. 9-55737 includes an overpayment of \$9.10 for taxes, which was later collected. This effected a reduction in that amount--\$9.10.

Voucher No. 9-24871 reflects a transposition of the figures used by an examiner who misread the correct figures \$3,209.25 as \$3,029.25. This effected a reduction of \$180.00.

Voucher No. 9-24869 shows the amount paid as \$18,548.33 whereas the examiner in preparing the GAO report (Def. Ex. 01, p. 146) omitted the 33 cents, effecting a reduction in that amount.

The foregoing differences aggregating \$189.43 account for the discrepancy between the tabulated total of the amounts appearing in the vouchers--\$157,593.89 (Def. Ex. 04), and the total amount of \$157,404.46 appearing in both the G.A.O. Report (Def. Ex. 01, pp. 142, 146) and the defendant's second amended answer (par. 48, p. 11) as alleged offsets.

33. The Commission concludes that the total amount of \$157,404.46 expended by the United States pursuant to section 5 of the Wheeler-Howard Act, 48 Stat. 984, in acquiring for the Lower Brule Sioux the lands described in the 57 vouchers (Def. Ex. 04) constitutes a proper offset against the Commission's award in this action.

34. The Commission finds that 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 it any credits or offsets which it may have that are not precluded by Section 2 of the Indian Claims Commission Act, 60 Stat. 1049.

35. The Commission finds that the plaintiffs, having been deprived without payment of just compensation of the lands erroneously excluded

from their reservation through disposition of said lands by or to the United States, are entitled to recover of and from the defendant the adjusted gross sum of \$18,818.11, plus interest at the rate of 5% from February 11, 1900, to July 14, 1934, and at the rate of 4% from the latter date to date of entry of final order in this case, or a total sum of \$71,747.63.

36. Defendant is entitled to offset \$71,747.63 of the total sum of \$157,404.46 expended for the purchase of land for the Lower Brule Sioux Indians (Fdg. 33) against the award to plaintiffs of \$71,747.63, leaving a balance which may be considered in any subsequent litigation between the parties of \$85,656.83 in defendant's favor.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner