

BEFORE THE INDIAN CLAIMS COMMISSION

BANDS OF MISSION INDIANS OF CALIFORNIA,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 80-C
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: June 18, 1969

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Two of the plaintiffs, Rincon Band and Pala Band, are identifiable groups of California Indians, organized pursuant to Articles of Association approved by the Secretary of the Interior.

The Articles of Association of the Rincon Band of Mission Indians were approved by the Commissioner of Indian Affairs March 15, 1960. The Articles of the Pala Band were approved November 6, 1960.

2. While plaintiffs, Rincon Band and Pala Band, each, have the legal capacity to bring this action pursuant to Section 2 of the Indian Claims Commission Act of August 13, 1946, 25 U.S.C. sec. 70a, any recovery would be limited to the proportionate interest of the petitioning bands in the claim set out.

3. In a prior case, to-wit, Indians of California v. United States, Court of Claims Docket No. K-344, a judgment was entered in favor of all

of the Indians of California and against the defendant on December 4, 1944 (see 102 Ct. Cl. 837).

4. The said judgment was based upon a stipulation entered into between the parties on October 30, 1944. By the stipulation it was agreed that the Indians of California were entitled to recover from the United States various sums totaling \$17,053,941.98 and that the United States was entitled to offset against that recovery various sums totaling \$12,029,099.64, resulting in a net judgment of \$5,024,842.34 in favor of the Indians of California.

5. The total amount credited to the defendant in Court of Claims case K-344 as offsets against the plaintiffs' recovery was made up of the following items:

Disbursements made out of "specific appropriations for the support, education, health, and civilization of Indians of California"	\$ 5,547,805.87
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Disbursements made out of appropriations for the Indian Service generally but by the appropriation acts certain amounts were apportioned to the Indian Service in California	1,573,249.66
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Out of disbursements made for the support and maintenance of the non-reservation Indian schools at Fort Bidwell, Greenville, and Riverside, California	<u>4,908,044.11</u>
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Total	\$12,029,099.64
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6. The Commission finds that the defendant conducted three Indian hools in California, to-wit, the Fort Bidwell School, the Greenville School

and the Sherman Institute, the latter also being known as Riverside Indian School.

7. From 1852 to 1934 the defendant expended the following sums on these schools: on Sherman Institute (Riverside Indian School) \$5,751,621.33; on the Fort Bidwell Indian School \$520,819.02; on the Greenville Indian School \$238,589.67, or a total of \$6,511,030.02. From 1934 to 1944 the defendant expended on the Sherman Institute the further sum of \$2,412,789.00. The aggregate of these expenditures was \$8,923,819.02. These expenditures were for the operation, maintenance, repair and construction of buildings on school premises. None were for the purchase of land.

8. Of the total sums set out in Finding 7, the expenditures for the construction and repair of buildings at the Fort Bidwell, Greenville and Sherman Schools from 1852 to 1944 aggregated \$1,058,036.68. There is no evidence to show how much of this sum constituted capital expenditures. Undoubtedly, a considerable amount was for repairs and would properly be classified as maintenance rather than a capital expenditure. However, even if the cost of both construction and repair of buildings is deducted from the aggregate expenditures of the school, the sum of \$7,865,782.34 is still left as undisputed items of operation and maintenance of the schools.

Furthermore, there is no evidence to show that any part of the \$4,908,044.11 which was offset because of disbursements for the support and maintenance of the non-reservation Indian schools was for monies spent

in constructing buildings for the Sherman Institute. In fact, there is positive testimony that there is no such evidence in that two of plaintiffs' attorneys, whose contracts to represent plaintiffs were approved by the Commissioner of Indian Affairs, have recommended that the claim be dropped because it lacks merit.

9. The Fort Bidwell, Greenville and Sherman Schools were attended by both California Indians and non-California Indians. An incomplete breakdown of students and years of attendance at the Sherman School shows that in the early years the enrollment was almost entirely composed of California Indians. For some of the subsequent years the proportion of non-California Indians varied, running as high as 50 and 70 percent. However, from 1934 to 1944, the California Indians again greatly outnumbered the "foreign" Indians, constituting 72.54 percent of the total enrollees.

The Attorney General of California, who represented the Indians of California, made a proposed settlement of Court of Claims No. K-344 in which he proposed deductions from the total expenditures for the three schools on the basis of an attendance of 50 percent California and 50 percent non-California residents at Sherman Institute; 90 percent California and 10 percent non-California residents at both Fort Bidwell and Greenville. However, this was on an overall basis, and the reasoning behind the estimated attendance is not explained. Obviously, the variations in proportionate enrollments along with variations in yearly expenditures required some

compromise in arriving at the total amount of school expenditures to be charged against the California Indians, and there is nothing to show that the estimates used by the Attorney General of California in making a proposal for settlement were those finally arrived at. In fact, since the ultimate settlement differed from the proposal it is obvious that it was not based upon his computations, but that other means were used to arrive at the settlement figures.

While we do not think it necessary or appropriate to attempt to determine how the compromise judgment was arrived at, we do note that if the percentage of California Indian enrollees adopted in the last stages of negotiation had been 62 or 63 percent for all the schools instead of 50 percent for Sherman Institute and 90 percent for the other schools as suggested by counsel for the Indians, the total offset agreed to could have been arrived at without including a single cent of money spent for construction or for repairs.

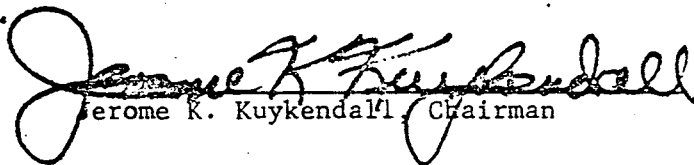
But even if some other percentage was used by the negotiators, it does not follow that any sum for construction per se was included in the total offset agreed to. A compromise is what it says it is -- a compromise. The Government may have agreed to a higher land value in computing its liability for the lands sued for in exchange for a more liberal allowance of offsets.

10. The Commission finds that the judgment rendered on December 4, 1944 in Indians of California, Court of Claims Docket No. K-344, was a

compromise judgment and that it is not possible to ascertain the specific expenditures which were included or excluded in arriving at the various offsets. However, the Commission further finds that there is no evidence that school building or land costs were charged as offsets and that it is a reasonable inference from the record in this case that such costs were not so charged. Hence, the Indians of California have no compensable interest in or to the Sherman Institute real estate.

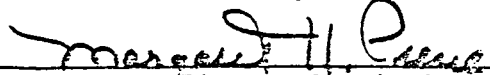
11. The Commission finds no evidence that automobiles, trucks, hospital equipment, furniture, or miscellaneous personal properties were removed to other states, used for defendant's purposes, or sold, as alleged in the petition.

12. There is no evidence that a tract of land was formerly used at the Sherman Institute for agricultural training or, if in fact such a tract did exist, that the Indians of California had any compensable interest therein, as alleged in the petition.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner