

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 110
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 22, 1970

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings of fact numbered 1 through 35 heretofore made herein, and to the findings of fact numbered 1 through 14 heretofore made in the decision resolving common issues of various Point Elliott Treaty claims, including the instant Docket No. 110, reported as Upper Skagit Tribe of Indians, et al., v. United States of America, 13 Ind. Cl. Comm. 583 (1964).

36. The defendant set out its claimed offsets in a motion for determination of offsets filed on May 8, 1968. Page 44 of that motion provides a summary of the claims made against the Lummi Tribe totalling \$109,794.48. However, by letter of October 23, 1968, addressed to petitioner's attorney, Frederick W. Post (copy to the Commission), the defendant advised that no supporting proof had been obtained with respect to many items included in the \$109,794.48, and that, accordingly, proof would be limited to certain items. This had the effect of eliminating the items earlier claimed under Part III, Sections AB and

AC of the Report (Defendant's Exhibit No. 6) of the General Accounting Office. (These reports are now compiled by the General Services Administration.) It also restricted the defendant's claims to the items of "provisions", "funeral expenses", and "purchase of land" in the remaining sections of the GAO Report. We accordingly find that defendant's offset claims against the Lummi Tribe are limited to the disbursement items noted above.

37. Under Part III, Sections C and D of the GAO Report the defendant has claimed as offsets expenditures for "provisions" in the amounts of \$4,614.76 and \$4,401.35. In analyzing the disbursement schedules which are the source of these sums, the Commission has observed, however, that the expenditures for provisions itemized therein amount to \$4,711.01 and \$5,668.88, respectively. The Commission has used the itemized amounts, which result in the latter totals, in making its findings.

38. Under Part III, Sections C and D of the GAO Report the defendant has claimed the following amounts, totalling \$10,379.89, as gratuitous expenditures for provisions made for tribes and bands of Indians parties to the Point Elliott Treaty:

<u>Appropriation:</u>	<u>Year</u>	<u>Amount</u>
1. "Incidental Expenses of Indian Service in Oregon and Washington"	1864 1869-1871	\$ 15.00 14.54
2. "Incidental Expenses of Indian Service in Washington"	1859 to 1881	1305.04
3. "Removal and Subsistence of Indians in Oregon and Washington"	1865	8.00

<u>Appropriation</u>	<u>Year</u>	<u>Amount</u>
4. "Removal and Subsistence of Indians in Washington Territory"	1858	\$ 499.99
5. "Support of D'Wamish and other allied tribes in Washington"	1881 to 1924	7,173.54
6. "Transportation of Indian Supplies"	1878 to 1905	1,303.13
7. "Telegraphing, Transportation, etc., Indian Supplies"	1907 & 1908	60.65

The defendant introduced in evidence representative vouchers to substantiate the above disbursements. (Defendant's offset exhibit Nos. 2 and 3.) Defendant's witness, Mr. Burrell C. Yates, testified that all of the original accounts and records are available in the Federal Records Center at Suitland, Maryland (Transcript, p. 14).

Under Items 3 and 4, the titles of the respective appropriations indicate that these expenditures (which are classified as from "other than treaty appropriations" in the GAO Report) were for removal expenses and are not proper gratuitous offsets under section 2 of the Act.

During the period the remaining disbursements were made, approximately 10.5 percent of the total population of the tribes who were parties to the Point Elliott Treaty were Lummi Indians. The following table represents 10.5 percent of the amounts disbursed annually under Items 1, 2, 5, 6 and 7 to the tribes which were parties to the treaty:

<u>Year</u>	<u>Population</u>	<u>Provisions</u>	<u>Transportation of Supplies</u>
1859	450	\$ 2.63	-
1860	No figures	-	-
1861	"	33.95	-
1862	"	-	-
1863	"	-	-
1864	"	1.58	-
1865	"	-	-
1866	"	-	-
1867	"	-	-
1868	"	-	-
1869	"	0.84	-
1870	"	-	-
1871	"	0.69	-
1872	"	-	-
1873	"	-	-
1874	"	4.46	-
1875	"	34.07	-
1876	"	-	-
1877	"	-	\$ 0.32
1878	"	-	1.90
1879	"	35.31	-
1880	"	26.41	1.12
1881	"	79.67	0.50
1882	"	67.33	10.69
1883	"	64.58	6.58
1884	275	48.51	7.05
1885	No figures	47.78	15.69
1886	"	72.98	29.94
1887	"	-	14.29
1888	"	-	8.38
1889	"	75.86	3.04
1890	"	47.25	4.65
1891	"	46.20	5.33
1892	"	-	6.17
1893	"	39.38	1.43
1894	"	42.00	2.81
1895	"	25.20	-
1896	346	-	1.64
1897	362	4.83	1.90
1898	369	24.68	1.75
1899	366	17.33	1.62
1900	322	14.18	0.74
1901	340	16.91	3.08
1902	354	17.06	3.97
1903	377	-	0.43

<u>Year</u>	<u>Lummi Population</u>	<u>Provisions</u>	<u>Transportation of Supplies</u>
1904	385	-	-
1905	412	-	\$ 1.80
1906	No figures	-	-
1907	414	-	3.96
1908	442	-	2.41
1909	435	-	-
1910	453	-	-
1911	473	-	-
1912	457	-	-
1913	515	-	-
1914	452	0.58	-
1915	469	0.58	-
1916	488	0.58	-
	TOTALS	\$ 893.41	\$ 143.19

From the above, it appears that the annual disbursements for provisions range from a low of \$0.58 each in 1914, 1915 and 1916 to a high of \$79.68 in 1881, with none at all in many years. The annual disbursements for transportation of supplies range from a low of \$0.32 in 1877 to a high of \$29.94 in 1886, with no disbursements in many years. In view of the very small annual disbursements and their infrequency as well as the character of the disbursements as indicated by the representative vouchers, the Commission finds that they did not constitute benefits to the tribe. Accordingly, these disbursements for provisions and transportation of supplies are disallowed as gratuitous offsets.

39. Under Part III, Section C of the GAO Report, the defendant claims the following amount as a gratuitous offset representing an expenditure for the purchase of land:

<u>Appropriation</u>	<u>Year</u>	<u>Amount</u>
"Payment for lands in Indian Reservation in Washington Territory"	1867 & 1868	\$2,923.00

This amount represents expenditures made in settlement of obligations under Article 2 of the Point Elliott Treaty and is disallowed as a gratuitous offset.

40. Under Part III, Section K of the GAO Report, the defendant has claimed amounts as gratuitous offsets representing funeral expenditures where the vouchers (Defendant's offset exhibit No. 1) indicate the deceased was a member of the Lummi Tribe. The appropriations and disbursements are as follows:

<u>Appropriation</u>	<u>Year</u>	<u>Amount</u>
1. "Support and Rehabilitation of Needy Indians"	1942 & 1943	\$ 193.50
2. "Support of Indians and Administration of Indian Property"	1933 & 1941	308.11
3. "Administration of Indian Property"	1942	25.00
4. "Relieving Distress and Prevention, etc., of Diseases Among Indians"	1925	20.00

The following table represents the amounts disbursed annually to the Lummi Tribe under Part III, Section K of the GAO Report:

<u>Year</u>	<u>Lummi Population</u>	<u>Funeral Expenses</u>
1925	515	\$ 20.00
1926	516	-
1927	599	-
1928	601	-
1929	No figures	-
1930	618	-
1931	619	-
1932	632	-
1933	621	-
1934	667	-
1935	667	17.98
1936	663	2.13

<u>Year</u>	<u>Lummi Population</u>	<u>Funeral Expenses</u>
1937	661	\$ 80.00
1938	668	15.00
1939	676	15.00
1940	676	153.00
1941	682	25.00
1942	724	190.00
1943	737	<u>28.50</u>
TOTAL		\$ 546.61

These disbursements for funeral expenses are disallowed as gratuitous offsets for the reason explained in our opinion issued this day in Docket Nos. 73 and 151, Seminole Indians of the State of Florida v. United States of America, and Seminole Nation of Oklahoma v. United States of America.

41. Under Part III, Section AA of the GAO Report, the defendant claims as gratuitous offsets the following disbursements, totalling \$6,241.85, for funeral expenses made for Indians of the Tulalip Agency, Washington (of which the Lummi Reservation is a part).

<u>Appropriation</u>	<u>Year</u>	<u>Amount</u>
1. "Administration of Indian Property"	1942	\$ 20.00
2. "Relieving Distress and Prevention etc., of Diseases Among Indians"	1916 to 1928	198.56
3. "Support and Civilization of Indians"	1925 & 1926	131.40
4. "Support and Civilization of Needy Indians"	1942 to 1946	1,662.95
5. "Support of Indians and Administration of Indian Property"	1929 to 1942	4,077.25
6. "Support of Indians at Colville and other Agencies and Joseph's Band of Nez Perces, Wash."	1922 & 1924	26.69
7. "Welfare of Indians"	1947 to 1950	125.00

The defendant introduced in evidence representative vouchers to substantiate the above disbursements. (Defendant's offset exhibit No. 4.) Defendant's witness, Mr. Yates, testified that all of the original documents and records are available in the Federal Records Center at Suitland, Maryland. (Transcript, p. 14.)

During the period the above disbursements were made, approximately 15% of the total population of the tribes within the jurisdiction of the Tulalip Agency were Lummi Indians. The following table represents 15 percent of the amounts disbursed annually under Part III, Section AA of the CAO Report:

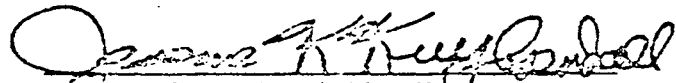
<u>Year</u>	<u>Lummi Population</u>	<u>Funeral Expenses</u>
1919	516	\$ 3.53
1920	459	2.25
1921	472	6.75
1922	476	7.04
1923	505	12.75
1924	No figures	1.46
1925	515	13.71
1926	516	6.00
1927	599	-
1928	601	-
1929	No figures	20.25
1930	618	28.05
1931	619	20.25
1932	632	17.25
1933	621	0.94
1934	667	10.91
1935	667	50.63
1936	663	6.76
1937	661	102.00
1938	668	93.53
1939	676	70.91
1940	676	123.38
1941	682	60.75

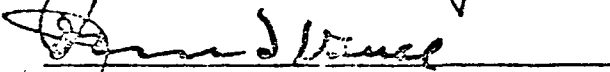
<u>Year</u>	<u>Population</u>	<u>Funeral Expenses</u>
1942	724	67.49
1943	737	60.00
1944	743	53.70
1945	761	63.75
1946	No figures	13.50
1947	"	15.00
1948	"	3.75
Total		\$ 936.29

These disbursements for funeral expenses are disallowed as gratuitous offsets for the reason explained in our opinion issued this day in Docket Nos. 73 and 151, Seminole Indians of the State of Florida v. The United States of America and Seminole Nation of Oklahoma v. United States of America.

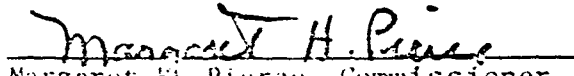
CONCLUSIONS OF LAW

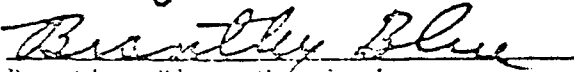
On the basis of the evidence of record and the foregoing Findings of Fact, this Commission concludes as a matter of law that the defendant is entitled to no gratuitous offsets under section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. §70a, against the interlocutory award of \$57,000.00 previously made to the plaintiff.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Farborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner