BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ZIA, PUEBLO DE JEMEZ, AND PUEBLO DE SANTA ANA, Plaintiffs,	)	
v.	)	Docket No. 137
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: September 15, 1971

Appearances:

Claud S. Mann and M. J. Clayburgh, Attorneys for Plaintiffs.

Bernard M. Newburg and Rembert A. Gaddy, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Commissioner Yarborough delivered the opinion of the Commission.

The Commission now has before it the question of allowable offsets against the interlocutory award previously entered in favor of the Pueblos of Zia, Jemez and Santa Ana against the United States. The claims, under Section 2, Clause 4 of the Indian Claims Commission Act (60 Stat. 1049, 1050), involve some 282,415.73 acres of land in New Mexico. The lands were taken by defendant at three different times, October 12, 1905; 1920; and April 4, 1936. On December 17, 1970, the Commission determined that the fair market value of the lands as of

the respective dates of taking was $938,000.00 (24 Ind. Cl. Comm. 270).

On November 20, 1968, the defendant filed an amended answer claiming entitlement to offsets for gratuitous expenditures for personal property and services for the benefit of plaintiffs and for real property reserved and held in trust for plaintiffs. The expenditures for personal property and services extended from 1905 through 1951, and the amount of offsets claimed was $85,219.66. An offset was also requested for the fair market value of several tracts of land which were alleged to have been granted in trust for the benefit of the several plaintiffs. No specific amount for the fair market value was noted in this amended answer.

On July 23, 1969, in response to a motion by defendant, we issued an opinion and order determining that any allowable gratuitous offsets of real property should be valued on the basis of "funds expended" for the property by the United States (21 Ind. Cl. Comm. 316).

A hearing was held before the Commission on August 19 and 20, 1969, in Albuquerque, New Mexico, on both the valuation and the offset phases of this case.[1/]

On December 3, 1969, the defendant filed a further amended answer to conform with the evidence presented at the August hearing. That

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1/ Following that hearing, on September 3, 1969, the Commissioner's report on preliminary determination of offset issues was made. The conclusions of that report are adopted in part and modified in part by this opinion and the accompanying findings of fact.

amendment included some additional lands which allegedly had been gratuitously set aside for the plaintiffs' use.

On August 14, 1970, the Commission requested that defendant file an additional schedule providing certain further specific information. In response, defendant filed with the Commission, on March 11, 1971, a tabulation of gratuitous offsets on an annual basis. This tabulation is, in effect, a supplement to defendant's amended answer of December 3, 1969. The tabulation includes about 638 entries for offsets claimed against the three pueblos. The nature of each expenditure is noted, and in most cases the expenditure has been apportioned on a population basis between two or more pueblos which shared the benefit of the expenditure. The schedule also indicates the population of each pueblo as of the year in which the gratuitous expenditures are claimed.

While the amended answers of November 20, 1968, and December 3, 1969, pleaded offsets for gratuitous expenditures in the amount of $85,219.66, defendant has, in its proposed findings of fact, in effect reduced its offset claim by eliminating most of the smaller items, as well as several categories of expenditures, e.g., expenses of Indian delegations, cash payments to indigent Indians, and funeral expenses. As a result, the offsets claimed in the proposed findings of fact, exclusive of land, amounted to $57,451.80. We commend the defendant for its action in reducing its claim for offsets and thereby eliminating the necessity for detailed consideration of innumerable

items which are not proper offsets. We concur with the defendant in its conclusion that many of the trivial expenditures were too small to have constituted tribal benefits. By eliminating small items, the defendant has excluded all the claims set forth under the following categories:

- Clothing
- Fuel and light
- Hardware, glass, oils and paints
- Household equipment and supplies
- Provisions

By necessity all of the transportation charges have been excluded since there is no basis for ascertaining which if any of the charges involved the transporting of allowable items. The defendant properly excluded its claims for payments to indigents. As we held in Seminole Indians v. United States, Docket Nos. 73 and 151, 24 Ind. Cl. Comm. 1, 6 (1970), "the entire category of expenditures for indigent Indians, including . . . funeral expense payments, should be disallowed as an offset against a tribal judgment."

We turn now to a consideration of the $57,451.80 worth of items which defendant contends should be allowed as offsets against the award in this case. Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) permits the consideration of gratuitous expenditures as offsets if the entire course of dealings and accounts between the United States and the Indians in good conscience warrants such action. We are satisfied that the course of dealings between the plaintiffs and the defendant has not been such that the United

States is prohibited from receiving credit for such gratuitous offsets as may be allowable. However, section 2 of the Act sets forth a number of expenditures which may not be properly offset against any award. These prohibited categories include removal expenses and moneys spent for agency or other administrative, educational, health or highway purposes. No expenditures are to be considered which were made prior to the date of the law, treaty, or Executive order under which the claim arose. There are other emergency appropriations and relief payments which may not be allowed as offsets. We have examined all of the claimed offsets to determine if any of them fall within the scope of the excepted categories of the Act. We have also considered whether the expenditures were for a tribal benefit or purpose, as opposed to an individual benefit.

1905 EXPENDITURES

Defendant has requested several offsets for Fiscal Year 1905, the largest being a charge of $56.32 against Santa Ana Pueblo for agricultural aid. We note that the Act of April 21, 1904 (33 Stat. 189) was the authority for these expenditures. This act provided for the fiscal year which ended June 30, 1905. The award which was entered in this case (24 Ind. Cl. Comm. 300) was based on the taking by the Government of three tracts of land which had been held by the plaintiffs under aboriginal Indian title. The first of these tracts was taken on October 12, 1905, when President Theodore Roosevelt signed the Executive proclamation which created the Jemez Forest Reserve, now a part of the Santa Fe National Forest (Finding of Fact

No. 28, 19 Ind. Cl. Comm. 59). Section 2 of the Indian Claims Commission Act, supra, provides that "expenditures made prior to the date of the . . . Executive Order under which the claim arose . . . shall not be a proper offset against any award." Because Fiscal Year 1905 terminated prior to the first date of taking, all requested offsets for that year are disallowed.

SCHOOL RELATED EXPENDITURES

Four paragraphs in defendant's amended answer of December 3, 1969, set forth expenditures made through certain school superintendents in New Mexico. The defendant has explained that at various times the Zia, Jemez, and Santa Ana Pueblos were placed under the administration of the superintendent of certain Indian training schools and that those superintendents performed the duties of an Indian agent and acted as the special disbursing agent for the several pueblos involved. The defendant has stated that it examined each voucher which involved an expenditure through a school superintendent to distinguish those payments which were made for the school from those payments which were made for the benefit of the Indians under the jurisdiction of the school. The text of the vouchers implies that at least certain portions of the expenditures which were made by the Indian school superintendents did involve education and training activities being carried on at the schools. Since it is not possible to determine what portion, if any, of the funds were actually used for noneducational purposes, we have determined that all items set forth in paragraphs 82, 83, 86, and 87 of the amended answer must be disallowed as expenditures made for educational purposes.

These items include defendant's proposed findings of fact Nos. 19 and 20 in toto, and portions of No. 23.

AGRICULTURAL AID

The defendant has claimed offsets in a number of years for a variety of items which have been generally classified as agricultural aid. These are considered under the several subheadings used by defendant in its amended answer and proposed findings of fact. We conclude that the following expenditures were gratuitously made for the benefit of the respective pueblos involved and that these expenditures are not within any of the prohibited purposes set forth in Section 2 of the Indian Claims Commission Act. Accordingly, these items are allowed as offsets:

A.	Clearing, Breaking, and Fencing Land	1928	$ 221.77
B.	Digging Wells and Well Equipment	1915	1,265.90
		Total	$1,487.67

The defendant has claimed in its proposed finding of fact No. 17 additional credits for clearing, breaking, and fencing land. The amounts claimed are $17.08 in 1915, and $19.41 in 1916. These expenditures are too small to support an inference that a tribal benefit was conferred. It is more likely, or at least equally likely, that only a few individuals were benefited, and these items are disallowed.

The defendant has also claimed credit for $90.21 expended in 1913 for "seeds, fruit trees and fertilizer." This amount represents a percentage allocation against the Jemez Pueblo from a gross figure of $131.51. The defendant has submitted a voucher (Def. Ex. No. 0-19) which indicates an expenditure of $164.55 for the purchase of trees and seeds for the Santa Clara and Jemez Indians, a portion of which

was to be planted for "demonstration purposes." We are unable to reconcile the amounts reflected in the voucher with the tabulation in the defendant's amended answer and proposed findings of fact. However, it appears that at least a portion of the seeds and fruit trees purchased in 1913 were to be used for educational purposes, and this item is disallowed.

Similarly, we find that the following expenditures for seeds, fruit trees, and fertilizer were of such magnitude that we assume they were for educational purposes also:

1912	$ 40.50
1915	34.39
1916	68.26
1931	90.16
1933	73.52

These items are disallowed. (Menominee Tribe of Indians v. United States, 118 Ct. Cl. 290, 326 (1951).)

The defendant has claimed credit for $45.75 spent in 1913 for the benefit of Jemez Pueblo. This figure is the plaintiffs' proportionate share of an expenditure of $70.25 for farm buildings which included nonplaintiffs as beneficiaries. The defendant has not given any basis for concluding that this expenditure constituted a tribal benefit, and this item is disallowed.

The defendant has also claimed credit for expenditures in the total amount of $245.24 for pest control in several different years. We conclude that these items were for health purposes. Because offsets for health expenditures are prohibited by Section 2 of the Indian Claims Commission Act, these items are disallowed.

AGRICULTURAL IMPLEMENTS AND EQUIPMENT

For 20 of the years between 1905 and 1951 the defendant claimed

offsets in its amended answer for gratuitous expenditures for agricultural implements. However, in its proposed findings of fact it has deleted claims in this category except for five years.

For 1915 defendant has requested an offset of $63.11. This is the plaintiffs' 11.5% share of an expenditure of $548.79 made that year for the benefit of the Pueblo Indians of New Mexico. In partial support of this claim, defendant's exhibit 0-35 is a voucher which reflects payment of $233.69 to the Studebaker Corporation of America for five wagons and accessories. The three plaintiffs were among 19 pueblos in the group for whom these expenditures were made. We believe these wagons were simply not subject to being divided among this many pueblos, and the expenditure cannot properly, therefore, be ratably apportioned. This item of $63.11 is disallowed.

Defendant's exhibit 0-45 is a voucher which indicates payment of $600 for a tractor in 1928. This expenditure was for the support and civilization of the Indians under the Southern Pueblo Agency. Paragraph 84 of defendant's amended answer reflects a total payment of $727.50 for agricultural implements in 1928 for the Indians under this agency. Defendant's exhibit 0-1 indicates (p. 328) that eight pueblos were under this agency's jurisdiction at that time, and that the three plaintiffs composed about 17.8% of the total population. The offset claimed is thus $129.50. Although we agree with defendant that as a general proposition it may be appropriate to offset a proportionate share of expenditures against the plaintiffs where the goods are such as could be ratably apportioned, we do not consider that a single tractor can properly be so apportioned. A single tractor is simply not subject to