

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE.)
 MARIE, ARTHUR LAWRENCE LABLANC,)
 DANIEL EDWARDS AND JOHN L. BOUCHER,)
 AND OTTAWA AND CHIPPEWA INDIANS OF)
 MICHIGAN, ET AL.,)
) Docket Nos. 18-E and 58
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
 Decided:

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplementary to those numbered 1 through 26 (7 Ind. Cl. Comm. 576), 27 through 50 (20 Ind. Cl. Comm. 137), and 51 through 53 (22 Ind. Cl. Comm. 372) heretofore entered in this case.

54. On October 28, 1970, the Commission, at 24 Ind. Cl. Comm. 50, 54-55, entered an "Order Amending Findings of Fact of May 20, 1959". The Commission found that the plaintiffs held recognized title to sub-areas "U" and "S" comprising 1,209,600 acres which were not included in the Commission's original determination of the overall acreage of Royce Area 205 that was ceded under the Treaty of March 28, 1836 (7 Stat. 491). These areas which should have been included in the overall area previously valued by the Commission are found to have a

value of \$1,088,640 or \$0.90 per acre, as of the effective date of the 1836 Treaty.

55. Also excluded from the Commission's original determination of overall acreage in Royce Area 205 is Royce 113, which contains 1,395 acres and was ceded by the plaintiffs under the Treaty of July 6, 1820 (7 Stat. 207). The valuation date is March 8, 1821, when the treaty was formally proclaimed. The area's true commercial value was in its gypsum deposits. Timber found upon the land had a nominal value, but would no doubt become more valuable at a future time. The acquisition of gypsum to manufacture plaster of paris was of prime interest to the defendant, and unlike timber, a viable market for gypsum did exist at the time of the treaty. For these reasons, the Commission finds that, in 1821, Royce Area 113 had a fair market value of \$1,116.00, or \$0.80 per acre. The defendant paid \$599.46 for this land. We find that the disparity between the value of the land and the consideration paid is unconscionable.

56. Under the Treaty of 1836, plaintiffs reserved two tracts for their own use, to be held as their reservations for a period of five years or possibly longer at the discretion of the defendant. These areas were almost adjacent to each other, one being in the upper peninsula and the other in the lower peninsula of Michigan. They were separated by the Straits of Mackinac. The defendant agreed to pay to plaintiffs two hundred thousand dollars in consideration of the plaintiffs changing these reservations from permanent ones to reservations for five years only, said amount to be paid whenever the reservations were surrendered.

Until that time 6% interest on the two hundred thousand dollars was to be paid annually to the Indians. These lands were finally relinquished to the United States in 1875.

The northernmost tract contained 259,971 acres and the other contained 142,000 acres. All of this land is within Royce Area 205 and has the same general characteristics and qualities as the other land in Royce Area 205.

This Commission has placed a value on most of the land within Royce Area 205. See 20 Ind. Cl. Comm. 137,138,139 (1968). While rejecting the ultimate conclusions of both plaintiffs' and defendant's expert appraisals, the Commission found the average value of lands located in both the Upper and Lower Peninsulas to be \$0.90 an acre. Since the reservation lands are contiguous and homogeneous to the lands valued by the Commission in that opinion, the Commission finds that the 401,971 acres of reservation land had a fair market value of \$361,773.90, or \$0.90 per acre, as of the effective date of the 1836 Treaty.

57. The total consideration that was promised or owed by the defendant and the total consideration that was paid by the defendant under the Treaty of March 28, 1836, are as follows:

<u>Article</u>	<u>Total Promised</u>	<u>Total Paid</u>
<u>Fourth</u>		
Annuity-cash	\$388,756.52	\$388,756.52
Treaty Amendment	200,000.00, plus 6% interest annually	440,000.00
Annuity - \$1,000/20 yrs.	20,000.00	20,000.00
Education	140,858.43	140,858.43
Missions	3,000.00	-

<u>Article</u>	<u>Total Promised</u>	<u>Total Paid</u>
<u>Fourth</u> (Cont'd)		
Agri. Implements	10,000.00	8,797.00
Medicine	5,390.70	5,390.70
Pro./Salt, Tobbaco, etc.	63,674.90	63,674.90
Provisions	150,000.00	139,300.00
<u>Fifth</u>		
Debt claims	300,000.00	244,934.23
<u>Sixth</u>		
Payment to half-breeds	150,000.00	148,262.37
<u>Seventh</u>		
Blacksmiths, shops, salaries	143,005.91	143,005.91
<u>Ninth</u>		
Payment to half-breeds in lieu of reservations	48,148.00	48,148.00
<u>Tenth</u>		
Payment to chiefs	30,000.00	30,000.00
<u>Eleventh</u>		
Payment to chiefs	<u>500.00</u>	<u>500.00</u>
	\$1,653,334.46, plus	\$1,821,628.06
	6% interest on \$200,000	

Comparing the above figure of what was owed under the 1836 Treaty (\$1,653,334.46) to the fair market value of the ceded lands (\$12,141,108.23), the Commission finds that the consideration was unconscionable.

58. Article 3 of the Treaty of July 31, 1855 (11 Stat. 621), was an accord and satisfaction of the liabilities of and claims against the United States under the stipulations of all former treaties (except the

Treaty of June 16, 1820, providing for fishing rights). In the years from 1785, when the first treaty was made with the plaintiffs, until the Act of March 3, 1871 (16 Stat. 556), when the United States abandoned the policy of making treaties with the Indian tribes, the United States entered into forty-four treaties with the plaintiffs, of which thirty-three were concluded prior to the Treaty of July 13, 1855. The defendant's obligations under these thirty-three treaties were not exclusively and strictly legal obligations but involved other matters such as protection of the Indians' life and property, protection of the Indians' hunting and fishing rights and recognition of their boundary lines. These and other future obligations were the liabilities from which the United States sought to be released. Therefore the provisions made for the plaintiffs under the Treaty of July 31, 1855, do not constitute either new or additional consideration for the land cessions made pursuant to the Treaty of March 28, 1836.

59. Following the fiscal year 1836, the defendant claims gratuitous expenditures in the sum of \$37,170.73 for aid, services, implements, supplies, equipment, provisions, presents payments to halfbreeds, and land for the benefit of the plaintiffs. These expenditures are itemized as follows:

Presents to Indians	\$ 1,369.00
Expenses of Indian delegations	636.05
Provisions	2,870.79
Clothing	345.92
Transportation of clothing	9.27
Purchase of livestock	614.14

Feed and care of livestock	22.50
Hardware, glass, oils, and paint	58.76
Agricultural aid -- seeds, fruit trees, and fertilizer	231.78
Agricultural implements and equipment	942.26
Transportation of agricultural implements and equipment	228.58
Purchase of land	19,749.68
Payments to halfbreeds in lieu of reservations (1836 Treaty excess, Def. Ex. 152-V, pp. 49, 127)	<u>10,092.00</u>
Total	\$37,170.73

60. After an examination of each of the items included in the above list, the Commission makes the following specific findings respecting gratuitous offsets based upon the General Accounting Office report and vouchers submitted by defendant.

a. \$1,369.00 - Presents to Indians

Expenditures of \$1,369.00 for presents to the Indians were made over a thirty-one year period (1836-1867), and ranged in any given year from \$8.00 to \$435.00. There is no indication, either in the GSA report or the vouchers, of the nature of the items purchased and the proportion of the expenditure disbursed for the benefit of the plaintiffs in relation to the total Indian population at the Mackinac Reservation. Therefore, these expenditures should not be allowed as an offset.

b. \$636.05 - Expenses of Indian Delegations

Disbursements in the above amount for expenses of Indian delegations were made during the period from 1857 to 1866. Defendant has presented no evidence upon which the Commission can determine whether the delegations acted at the request of and on behalf of the Indians or were required by action

of the United States. Accordingly, the above amount should be disallowed.

c. \$2,870 - Provisions

Expenditures in the above amount for provisions were made over a thirty-year period from 1844 to 1873, and ranged from \$12.50 to \$1,000.00 in any one year. Defendant has failed to meet the burden of establishing which portion of these expenditures were made on plaintiffs' behalf and whether the benefit conferred, if any, was tribal and not individual. This claim should be disallowed.

d. \$345.92 - Clothing

Defendant expended \$345.92 for clothing over a period of twenty years commencing in 1862 and ending in 1882. Disbursements ranged from \$18.00 to \$178.42 in any given year. Available population figures indicate that there were approximately 6,000 members of the plaintiff tribes living on the reservation during this period. Vouchers indicate that the largest single expenditure (\$178.42) was an emergency disbursement to care for destitute Indians residing near Northport, Michigan. Defendant's exhibit O-6, which shows a \$50.00 expenditure in 1875 to purchase 6 men's coats and 3 men's pants, is a typical voucher for clothing. In light of the tribal population figures provided by defendant, such expenditures cannot be considered a tribal benefit and should be disallowed as an offset.

e. \$9.27 - Transportation of Clothing

Since disbursements made for clothing were disallowed as an offset, transportation of clothing expenses must also be disallowed.

f. \$614.14 - Purchase of Livestock

Purchases totalling \$614.14 for livestock were made by defendant in 1875 (\$264.00) and 1880 (\$350.14). These disbursements were made for 6 oxen, 5 steers and 7 heifers. At the time the purchases were made, plaintiffs tribal membership was estimated to be 6,500. Under these circumstances the Commission finds that this small amount of livestock could not serve a tribal population of this size. These disbursements did not confer a tribal benefit and should be disallowed as an offset.

g. \$22.50 - Feed and Care of Livestock

This expenditure was made by defendant in 1856. There is no evidence presented by defendant upon which the Commission could determine what proportion of it, if any, was spent on livestock which may have belonged to plaintiffs. Therefore, this expenditure should be disallowed as an offset.

h. \$58.76 - Hardware, Glass, Oils and Paint

These expenditures were made in two different years. In 1878, \$38.66 was spent and \$20.10 was spent in 1943. In 1878, 6,000 Chippewa Indians resided on the Mackinac Reservation. The evidence indicates that the 1943 expenditure was for Chippewas residing in the Bay Mills Indian Community. There are no 1943 population figures available for the Bay Mills Indian Community. These amounts are so small that the conclusion that they conferred an individual and not a tribal benefit is inescapable and they should not be allowed as an offset.

i. \$231.00 - Agricultural Aid

Disbursements by defendant for seeds, fruits, trees and fertilizer were expended over a period of four years from 1878 to 1881. Defendant's vouchers (0-10, 0-11) show two purchases in 1880 in the amounts of \$67.00 and \$52.37 expended for small quantities such as 1/2 pint of peas and 1/2 ounce of turnip seeds. At the time these amounts were expended, there were 6,000 members of plaintiff tribes, comprising 61% of the population of the reservation. None of these purchases were made in quantities large enough to indicate a tribal benefit. This claimed offset should be disallowed.

j. \$942.26 - Agricultural Implements and Equipment

This equipment consisted of 25 wagons and accessories. The transportation of these wagons can be traced only from the seller in Jackson to the purchaser in Detroit, but there is no evidence that they ever were delivered to the Mackinac Agency. In view of the failure of proof the above disbursement should be disallowed as an offset.

k. \$228.58 - Transportation of Agricultural Implements and Equipment

These claimed expenses for transportation of agricultural implements and equipment should be disallowed because of failure of proof that delivery was made.

l. \$19,749.68 - Purchase of Land

In the fiscal years 1939 through 1942, the defendant expended \$19,749.68 for the purchase of approximately 1300 acres of land in Chippewa County, Michigan. These purchase were made for the benefit of

the Bay Mills Community of Indians as provided by section 5 of the Act of June 18, 1934 (48 Stat. 984, 985), under the appropriation acts of June 22, 1936 (49 Stat. 1757, 1763, 1765, 1766), May 9, 1938 (52 Stat. 291, 300), May 10, 1939 (53 Stat. 685, 695), June 18, 1940 (54 Stat. 406, 414, 415), and June 28, 1941 (55 Stat. 303, 312, 313). It is therefore a proper offset. Having considered the nature of the claims asserted herein, and the entire course of dealings and accounts between the parties, we find nothing that would deny to the defendant credit for this offset. Accordingly, it should be allowed.

m. \$10,092.00 - Payment to Halfbreeds in lieu of Reservations

These payments were "excess" disbursements made under Article 9 of the Treaty of March 28, 1836. The total required expenditure under this article was \$48,148.00, which has been credited as consideration. The "excess" sum of \$10,092.00, which was paid to halfbreeds in lieu of individual reserves, conferred individual benefits, and, therefore, is not a proper offset and should be disallowed.

n. \$21,000.00 - Annuity Goods

The defendant claimed that the above sum was expended in 1837 for "annuity goods" under Article 4 of the 1836 Treaty. Article 4 makes no provision for such a payment. There is no record of this single expenditure in the defendant's disbursement schedule, and no basis for the allowance of this item as an offset has been shown. It therefore should be disallowed.

