BEFORE THE INDIAN CLAIMS COMMISSION

THE WESTERN SHOSHONE IDENTIFIABLE GROUP REPRESENTED BY THE TEMOAK BANDS OF WESTERN SHOSHONE INDIANS, NEVADA, Plaintiff,	)	
v,	)	Docket No. 326-K
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: August 15, 1977

Appearances:

Robert W. Barker, Attorney
for Plaintiffs.

MaryEllen A. Brown, with whom
was Assistant Attorney General,
Wallace H. Johnson, Attorneys
for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

In this proceeding the Commission must decide the amount of offsets, if any, allowable against the interlocutory award of $26,154,600.00 entered in the valuation phase of this case in favor of the plaintiff. (Western Shoshone Identifiable Group v. United States, Docket 326-K, 29 Ind. Cl. Comm. 5 (1972)). The United States requests a deduction against the award in the amount of $436,194.77 for gratuitous expenditures which it asserts it made on behalf of the plaintiff. A hearing on offsets was held on October 9, 1973.

The first group of expenditures for which the United States claims offsets consists of 9 separate tracts or ranches containing approximately 18,484 acres of land, most of which is within the Western Shoshone aboriginal area.[1/] The tracts were purchased between 1938 and 1943 under section 5 of the Indian Reorganization Act (25 U.S.C. 461, 465). The defendant claims $266,131.00 as gratuitous offsets out of the gross purchase price of $284,247.84 for the tracts, having deducted from the total price an amount representing the value of the plaintiff's lands on July 1, 1872, the evaluation date stipulated by the parties herein. The amount deducted was based on their average per-acre value in 1872, as found by the Commission in the valuation phase of the case. All except small parts of the purchased tracts in addition to other small reservations not here involved were excluded from the total acreage of plaintiff's aboriginal lands valued by the Commission in the 1972 valuation proceeding.[2/]

1/ One of the 9 tracts consists of 2 separate tracts. That is, the Collins and Dieringer tract containing 480 acres bought in 1941 and the Easton and Hiskey tract containing 480 acres bought in 1942 are listed together as the Worthington ranch. (See Def. Ex. O-2 and proposed findings 8, 9, and 10.) Both tracts became a part of the Yomba Reservation as explained hereafter.

2/ A relatively small amount of land (approximately 1,580 acres) was inadvertently omitted from the 23,596.43 acres of ranches and small reservations which were excluded from the aboriginal area in Nevada by agreement of the parties at the valuation hearing. Also, two small reservations, namely, Battle Mountain, containing 680 acres and Duckwater containing about 3,785 acres were not claimed as offsets by the defendant in this proceeding although they were excluded, as reservation land, from the acreage of plaintiff's claim valued in 326-K.

The defendant claims offsets for the full market value of the 1,580 omitted acres without deducting the average value per acre on the evaluation date, the process followed in determining offsets claimed for the remaining acreage excluded by agreement of the parties. In view of our conclusions on the claim for offsets for these ranches, the distinction is immaterial.

The plaintiff's claims under sections 4 and 5 of the Indian Claims Commission Act (60 Stat. 1049, 1050), on which the 1972 award herein was based, included 22,211,753 acres of Nevada land (which excluded 23,597 acres, most of which make up the ranches and small reservations here claimed for gratuitous offsets), and 2,184,650 acres in California. At the valuation trial on September 12, 1967, the parties agreed that these small tracts or ranches purchased for the plaintiff, including the South Fork purchases, the Yomba Reservation, and others, would be excluded from the area to be valued and would not be treated later separately as an offset (See Finding 69). However, the United States now contends that its counsel who agreed, in effect, at the valuation hearing herein that the cost of the tracts would not be asserted as offsets, intended only that the full value of the tracts would not be asserted as offsets. In reply, the plaintiff argues that the defendant is required to abide by the unequivocal agreement at the valuation hearing in 1967 herein before a Commissioner that the purchase of these ranches within the area of aboriginal use would not be counted as offsets (see Finding 69). The plaintiff also argues that the tracts benefit too few individuals to constitute a tribal benefit and that they may not be allowed as gratuitous offsets because their purchase fulfilled a treaty provision. Resolution of the questions raised requires consideration of events which led to the purchase of the several tracts.

Under the Treaty of Ruby Valley of October 1, 1863 (18 Stat. 689), the Western Shoshone Indians granted to the United States certain rights

and privileges in Western Shoshone lands. The treaty defined, in Article V, the boundaries of the country claimed and occupied by the plaintiff. Article VI of the treaty provided that whenever the President of the United States determined that the Indians should abandon the roaming life and become herdsmen or agriculturalists, the President would make necessary reservations for their use within their country, and the Indians agreed to reside and remain on such reservations as the President indicated.

In response to requests by leaders of the Western Shoshones and officials of the United States that lands be reserved for the use of plaintiff within the boundaries of their aboriginal lands, one reservation and several small settlements were started.[3/]

3/ Of these, Carlin Farms, said to contain from a few hundred to 1,000 acres was first used in the early 1870's as an area where Western Shoshones might live and grow their own crops. The Executive Order of May 10, 1877, which set aside Carlin Farms reserved it for the Northwestern Shoshones, not the Western Shoshones. (1 Kapp. 865) The reservation was canceled by Executive Order of January 16, 1879, and the lands were restored to the public domain. Id. The defendant's contention that the Western Shoshones had no interest in Carlin Farms is not well taken. The United States Indian Agent for Nevada who, with the farmer for the Western Shoshones, selected the Carlin Farms Reservation, expressly stated that the tract, which was situated in the north central portion of the Western Shoshone's aboriginal use area, was chosen for the use of the Western Shoshones. The agent later reported to the Commissioner of Indian Affairs that the Western Shoshones were using and developing the land and that the results were as fine as any in the area. The farmer for these Indians confirmed the use of Carlin Farms, among other tracts, by the Western Shoshones, and remarked a number of times after the Duck Valley Reservation was established in 1877 on the refusal of some of the Western Shoshones who had settled at Carlin Farms to move to Duck Valley. Correspondence from officials in the field which is here in evidence does not mention any use of Carlin Farms by Northwestern Shoshones. In the circumstances, we conclude that the failure of the Executive Order to mention the interest of the Western Shoshones in the Carlin Farms Reservation was inadvertent.

To continue living in the area of their aboriginal lands, the Western Shoshones, displaced by white settlers, worked on ranches for the settlers, rented land from them, worked in mines or tried to live by hunting. Many were destitute when the land and water resources within the area were taken by settlers. The farmer who was employed by the United States to assist the Western Shoshones and to find a reservation for them was forced in 1877 to move north and outside of the use area of the Temoak bands for suitable land. He recommended the establishment of a reservation for plaintiff on lands known as the Duck Valley Reserve close to the northern boundary of Nevada extending into and including adjacent land in southern Idaho.

According to the 1877 report of the Commissioner a number of

3/ (cont'd)
The conclusion is reenforced by reports of efforts to move Western Shoshones living in the Ruby Valley area to Carlin Farms after it was established. Apparently, several hundred head of cattle were provided by the United States to Western Shoshones living in the Ruby Valley area before 1872. After a number of years this livestock (except for 25 head) was taken from the Ruby Valley Western Shoshones and moved to Carlin. The Western Shoshones in Ruby Valley were told that they could have their livestock if they moved to Carlin, and an Indian agent reportedly told Chief Temoak, a prominent leader of all Western Shoshones who was living in Ruby Valley, that if Temoak would go with the cattle, the agent would move Temoak to Carlin. To this, Temoak replied: "If you move my country, I go too. Have my ground here, I can't move." Western Shoshones from Temoak's band were often mentioned as among plaintiff's members who did not want to leave their ancestral lands and move to the Duck Valley Reservation.

leaders of the Western Shoshones favored setting aside Duck Valley lands as a reservation, even though these were north and outside of the use area of the Temoak bands. Both the Indians and the United States realized before Duck Valley Reservation was established that the United States had not acted soon enough to set aside a reservation for the Western Shoshones. Two special commissioners reported in 1873 to the Commissioner of Indian Affairs on the condition of Indians in Utah, Nevada, and Southern Idaho who had not been settled on reservations. The commissioners concluded that under Article VI of the Treaty of Ruby Valley, the Western Shoshones could be required to live on a reservation if directed by the President, but that such reservation must be within the boundaries described in Article V of the Treaty (i.e. the aboriginal use area). The Commissioners observed, however, that:

> . . .within the bounds of the territory over which these tribes roam there is no district of country with sufficient water and other natural facilities for a reservation, not already occupied by white men. In fact, the lands along the streams and almost every important spring has either been entered or claimed, and should the Government attempt to purchase such land for the benefit of the Indians, it would be found to involve a great outlay of money as water rights and improvements are justly held at very high prices. (See Finding 71)

The Duck Valley lands were selected for the Western Shoshones because, for the most part, these lands were unclaimed by settlers and were within the aboriginal area of some bands of the Western Shoshones. Many Western Shoshones living in the Ruby Valley area and some in the area of Carlin Farms were unwilling to move to Duck Valley because,

inter alia, it was outside of the immediate area of their land, and they understood that the treaty agreement of the United States was to provide reservation lands within the Ruby Valley area. When the Duck Valley Reservation was established in 1877, representatives of the Bureau of Indian Affairs estimated that there were between 2 and 4 thousand Western Shoshones living in and near their aboriginal use area. Many of them did not move from their aboriginal lands north to settle at the Duck Valley Reservation.

Between the years 1877 through 1945, the number of Western Shoshones at Duck Valley varied from 200 to 1058. Since 1886, when land was added to the reservation for Paddy Caps' band of Paiutes and other Indians the President might settle thereon, some Paiutes, probably some Northwestern Shoshones, and perhaps other Indians have shared the use of Duck Valley Reservation with the Western Shoshones. Many of the Western Shoshones who did not move to Duck Valley worked for ranchers or at mining settlements within their aboriginal use area. Others were squatters who lived on public lands. During the depression in the thirties, hundreds of Shoshone Indians, many of them Western Shoshones living in the northeastern and southern portions of plaintiff's aboriginal area, were unable to find work and had no land or other means of livelihood.[4/] It was

4/ In the mid-1930's, the Duck Valley Reservation lands, according to a Bureau of Indian Affairs official, did not provide adequate support for the approximately 730 Indians living there.

to obtain land as a means of support for some of these Indians in northeastern and southern Nevada that, except for the Jarvis tract discussed below, tracts or ranches here claimed as offsets were purchased.

The record contains much evidence of the attachment of the Temoak Bands to their aboriginal lands and of their disappointment that a reservation was not established within the Ruby Valley area. This is pointed to in support of the contention on behalf of the plaintiff that the purchase of the ranches and small reservations was in fulfillment of a treaty promise, and, therefore, may not be claimed as a gratuitous offset. We must reject this contention because the tracts were not purchased under authority of a treaty provision, but rather under the authority of section 5 of the Indian Reorganization Act (25 U.S.C. §465). However, the fact that the Indians for whom the land was bought were not living on a reservation was a principal reason for the purchases.

In the late 1930s and for several years thereafter, the United States, acting through the Bureau of Indian Affairs, purchased a number of ranches and relatively small tracts of land for some of the landless, unemployed, and destitute Shoshones and other Indians in Nevada for the purpose of providing a means of livelihood for them. The purchased tracts are ranch or grazing lands and some of them contain cultivable areas with water rights. Several of them were separate ranches which supported one or two families before they were purchased. Findings herein and in the valuation proceeding in this case indicate that large

acreages were necessary to support a livestock operation in this part of Nevada. (See Western Shoshone Identifiable Group, supra, at 65-9.)

The Commission has found that the separate tracts here involved contain relatively small acreages in comparison with ranches in the area, and, even when considered together, the tracts are not sufficient to support a significant proportion of plaintiff's population as shown for 1940 and 1950 (finding no. 79.)

A report of the Carson agency in 1935 in support of its plan to purchase land in the South Fork area stated that there were about 915 Shoshones living in the northeastern quarter of Nevada who had no lands from which they could make a living. The report noted that a very few individual Indians had allotments on Overland Creek in Ruby Valley but that there was a constant bitter fight about water rights between the few Indians and the white ranchers in Ruby Valley and the Indians were not able to make enough to live. Many of the Indians in the area had been dependent on employment on ranches or in Nevada towns but most Indians were jobless because of the depression. The South Fork project was proposed as a rural Indian community for the permanent relief and rehabilitation of about 150 Shoshone families. Land was actually purchased for the use of about 25 families in the South Fork area.

Many of the 349 Shoshone Indians living in or near Nye County near the southern portion of plaintiff's aboriginal use area were destitute and without a means of making a living in the mid-1930's according to a

report of the Carson agency which discussed a project to purchase a number of the tracts here claimed for offsets. Some of these tracts became the Yomba Reservation, for the use of a number of the families living in the Nye County area.

A 1937 report by a representative of the Bureau of Indian Affairs describing the need for the acquisition of land for the Shoshones in Nevada stated that the Shoshone Indians living in Nye and Lander counties, among others, were largely landless and without permanent homes, and lived as squatters and drifters under deplorable conditions. About 20 years earlier, most of these Shoshones lived in the foothills near Tonopah, Nevada, and for a time earned a living by selling fuel wood in Tonopah. They raised enough cattle for their own use and raised and sold stock horses. Later, the United States Forest Service objected to their occupancy of the foothills and range lands, forced the Indians out of the forest area, and destroyed their range horses. Some of the Shoshones in the area who tried to keep their cattle were always in trouble for trespassing on lands and waters which the whites claimed. A few of these families drifted into the Walker River Reservation, but were unable to obtain water and forage for their stock. Many were living in or near Tonopah on charity.

In a letter of March 9, 1936, to Senator Patrick McCarran, the Superintendent of the Carson Indian Agency at Stewart, Nevada, stated that there was no existing reservation on which the homeless Nevada Shoshones

could be settled, that existing reservations were completely inadequate to support the Indians then living on them, and that the agency expected to propose land purchases amounting to about $50,000 each for the Nye County Shoshones, the Shoshones of northeastern Nevada, and for the Washoes.

In other correspondence of about the same date, the Superintendent of the Carson Agency expressed the opinion that it was important that the Bureau of Indian Affairs give preference to acquiring land for needy Indians such as the landless Shoshones in Nevada.

Families and individuals were selected by representatives of the Bureau of Indian Affairs to receive assignments of land (individual use areas) on the tracts here involved which were purchased under section 5 of the Indian Reorganization Act. Factors such as family composition, ability to use and develop the land, and need were considered in selecting those who received assignments.

Plaintiff's witnesses at the hearing on offsets on October 9, 1973, included an anthropologist, Dr. Omer Stewart, who specialized in the study of the Western Shoshones, and George La Vatta, a Shoshone-Bannock Indian who worked for many years in the Indian Service of the United States. In the early 1930's, the Western Shoshones who did not live at Duck Valley did not receive assistance through the Bureau of Indian Affairs except for a few old or indigent individuals. The non-reservation Indians reportedly begged for food and in other ways scrounged food

to survive. Dr. Stewart gave the following summary of the economic condition of these Indians:

> It's obvious that the Indians who did not go on Reservations have had no, virtually no assistance from the Federal Government so that they were in a poor socio-economic position in relation to other Indians, that the reservations favored and reservations provided considerable assistance, but even there as we know from national studies, the level of prosperity is the lowest; that is, the Indians are at the very bottom of the socio-economic status.
>
> The Western Shoshone off the reservations were below that. You could hardly imagine people surviving, living as they did, from my observation and from the studies I have done in the situation that they stayed and found themselves.

Dr. Stewart's description of the condition of the Western Shoshone Indians was based on field work and personal observation in the 1930's, 1940's and as recently as 1972.

According to Dr. Stewart, one of the "best periods of their existence" was the great depression in the 1930's since it was a time when federal relief programs were established for all poor people including the landless Western Shoshone Indians who were able to achieve "a slightly better survival."

Land acquired under section 5 of the Indian Reorganization Act may be treated as a gratuitous offset under the Indian Claims Commission Act if, in the discretion of the Commission, the circumstances so warrant. Section 5 of the Indian Reorganization Act authorizing the Secretary of the Interior to acquire lands and interests therein for Indians provides that title to land so acquired must be taken in the name of the United

States in trust for the Indian tribe or individual Indian for whom the land was acquired. Section 7 of the Act (25 U.S.C. §467) authorizes the Secretary to proclaim new Indian reservations on lands acquired under, inter alia, section 5 of the Act. Under section 19 of the Act (25 U.S.C. §479), the term "tribe", when used in the Act, means, inter alia, the Indians residing on one reservation.

The tracts for which the defendant is asking gratuitous offsets were not purchased for any tribe which was in existence at the time of the purchases. Instead, the persons who were selected to live on the tracts organized as tribes under the Indian Reorganization Act (25 U.S.C. 476). The newly organized tribes consisted of the adult Indians who had been selected and were entitled to reside on the recently acquired tracts.

Four of the tracts purchased which are claimed as gratuitious offsets here (two of which were treated as a single ranch by the defendant, see note 1, above) make up the Yomba Reservation in Nye County, established in 1938 and proclaimed under section 7 of the Indian Reorganization Act. The tracts had formerly been single family ranches on which about 16 Indian families were settled. The lands were purchased by the United States in trust for the use and benefit of "Shoshone Indians of Southern Nevada" or "such landless Shoshone Indians resident in southern Nevada, who are eligible under Section 19 of the Indian Reorganization Act and who shall be designated by the Secretary of the Interior." The lands making

up the reservation are Yomba tribal lands, part of which were assigned to families and individuals selected by Bureau of Indian Affairs representatives. Thus, designated individuals may have use interests in the assigned lands, but the United States holds legal title to all of the reservation land for the Yomba tribe, i.e, for all of the Indians entitled to live thereon. The defendant did not define or characterize the interest of the plaintiff Western Shoshones in the tribal lands of the Yomba reservation.[5/] Since the lands are held in trust for Indians who may be from the Northwestern or Goshute Shoshones and/or some other group of Indians in addition to the Western Shoshones, and there appears to be no way of

5/ The United States may hold land in trust either for an individual Indian or for a group or tribe of Indians. The defendant apparently assumes that because the tracts here involved are held in trust for a group or tribe of Indians, the purchases must have amounted to a tribal benefit. However, the tribe or group for whom the purchased tracts are held in trust is not the plaintiff, but is a separate, selected group of individuals and families who were needy and landless at the time the tracts were purchased, and some of whom were assigned use interests in particular parts of the purchased tracts. Some of the individuals and families are presumably members of the Western Shoshone Identifiable Group, plaintiff herein; others apparently are not. The United States does not hold the purchased tracts as tribal lands of the plaintiff, but as tribal lands for the Indians selected and entitled to live on the purchased tracts. Reservation membership and land assignments on the tracts which are now reservations under section 7 of the Indian Reorganization Act are controlled and governed by the Constitution, by-laws, and charter provisions of the separate reservation groups or tribes. Changes therein are usually subject to the approval of the Secretary of the Interior.

ascertaining the interest of the Western Shoshones in the Yomba tribal lands (see Handbook of Federal Indian Law, 757-765 (1958 ed.)), the defendant has not established that the purchase of the Yomba Reservation lands was a benefit to the plaintiff Western Shoshones.

In addition, we think that the purchase of four relatively small ranches was a benefit to the landless, needy Indians who were selected to settle thereon, but did not amount to a tribal benefit for the plaintiff even if all Yomba Reservation members were shown to be Western Shoshones.

Accordingly, the claim for gratuitous offsets for the four tracts making up the Yomba Reservation will be disallowed. These tracts are: the Bowler tract, the Bolster ranch (Doyle), the Collins and Dieringer ranch, and the Easton and Hiskey tract (Worthington ranch).

An Executive Order of September 16, 1912, set aside 120 acres of land in the Ruby Valley area, Nevada, for allotment to Paiute and Shoshone scattered bands. Later, some additional land was allotted so that these Indians (referred to as the Temoak Bands of Shoshone Indians) had in all about 560 acres of land. In an adjudication of water rights in the area, the Indians were allowed a vested water right for only 33 acres of this land. The land is located on the eastern slopes of the Ruby Mountains, was described in a 1937 report as generally rocky, untillable, and insufficient to form a single ranching unit. There was no irrigation water available for the 20 acres of cultivable land within the Ruby Valley colony site in 1937. The 13 families living on the land subsisted by

seasonal labor on neighboring ranches or relief. The purchase of the Odgers ranch was intended to benefit some of the Ruby Valley colony.

The Odgers ranch, containing about 1,987 acres in Ruby Valley east of the South Fork Reservation, was purchased for $16,200 in 1939 by the United States in trust for such Indians of the Temoak Bands of Western Shoshone resident in Nevada as the Secretary of the Interior designated in accordance with section 19 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The ranch, which prior to its purchase by the United States had been occupied by two families, was occupied for a time by perhaps ten Indian families. Bureau of Indian Affairs representatives later found the ranch capable of supporting two to three Indian families only. Two families were living on the property in 1946. In our opinion, the purchase of this tract amounted to an individual, not a tribal benefit. Accordingly, it will not be allowed as a gratuitous offset.

South Fork Purchases

One of the tracts of land claimed here as a gratuitous offset, the Drown tract, which became part of the South Fork or Te-moak Reservation established in 1941, under section 7 of the Indian Reorganization Act, was purchased in trust for such Indians of the Temoak Bands of Western Shoshones resident in Nevada as were designated by the Secretary of the Interior. Two others, the Ogilvie tract, purchased for the use of Indians of Te-moak Bands, and the Dewar tract, for the use and benefit of the Temoak Bands of Western Shoshone Indians, and perhaps for

others, are a part of the South Fork or Temoak Reservation which now includes about 13,000 acres consisting of four or five single family ranches acquired for Shoshones and Paiutes. . When the first two of the South Fork purchases were made in 1938 and 1939 approximately 25 needy and landless Shoshone families were selected to settle on the land. Since the establishment of the reservation in 1941 under §§7 and 14 of the Indian Reorganization Act, the tribe to whom the beneficial interest in the separate tracts belongs is made up of the persons entitled to live on the reservation. In the absence of statute, there is no way of separating out the interest of the Western Shoshones in the tribal lands of the South Fork Reservation from that of other Indians who were selected and are entitled to live there. (Handbook of Federal Indian Law, supra.)

Moreover, as with the lands included in the Yomba and the Ruby Valley Reservations, we conclude that the number of landless needy Indians settled on the South Fork purchases, even if all 25 families first selected to move on the land were members of plaintiff, were too few to consider the land a benefit to the tribe, particularly in view of the report that about the time of the purchase more than 900 landless Shoshone Indians, many of whom were unemployed, living in the northeast portion of Nevada, were intended to benefit from the South Fork purchases. Accordingly, the defendant's claim for gratuitous offsets for the purchase of the South Fork tracts, i.e., the Drown, Henderson, Ogilvie, and Dewar tracts, will be disallowed.

The Jarvis ranch, a tract containing 160 acres purchased by the United States in 1938, is a portion of a white settler's ranch within the exterior boundaries of the townships in Idaho which were set aside by Executive Order of May 4, 1886, and added to the Duck Valley Reservation for Paddy Cap's band of Paiutes and other Indians the President might settle thereon. The land withdrawn by that Executive Order included T.15 S., Rs. 1, 2, and 3 E. of the Boise meridian, except such tract or tracts of land within the said townships, the title to which had passed out of the United States, or to which valid homestead or pre-emption rights had attached prior to the date of the order. The land so added to the Duck Valley Reservation in 1886 is shown as Royce Area 660 in Idaho (Eighteenth Annual Report of the Bureau of American Ethnology, Part 2, Indian Land Cessions in the United States).

The plaintiff asserts that the Jarvis tract was purchased for and has been used by the Indians of the reservation living in the area of the tract and that these were the Paiutes and not the Western Shoshones. Since the 1886 Executive Order referred to above substantiates the plaintiff's assertion as to its location within the Paiute portion of the reservation and the defendant has not shown that the plaintiff benefited from the purchase of the Jarvis tract, the price of the tract will be disallowed as a gratuitous offset.

In our opinion, the purchase of the separate tracts here involved is comparable to the cash payments to indigent Indians considered by the

Commission in the opinion on rehearing in Kiowa, Comanche and Apache Tribe of Indians v. United States, Docket 32, 5 Ind. Cl. Comm. 297 at 305-306 (1957), aff'd 143 Ct. Cl. 534, 543; rehearing denied, Id. at 545 (1958); cert. denied 359 U.S. 934 (1959), in which the United States disbursed $396,844.96 for the health, support, and rehabilitation of needy members of the plaintiff tribes and the aid was paid directly to individual Indians. The separate tracts here purchased were intended to provide a means of support for the needy Indians who were selected to live thereon from among a large number of homeless Indians in southern and northeastern Nevada. Some of those selected to live on the tracts received assignments or use interests in particular parcels of land. They did not acquire individual property interests in the land since the tracts are tribal lands, held in trust for the group or tribe of Indians entitled to live thereon. Claimed expenditures which benefited needy individual members of the plaintiff group but were not a tribal benefit may not be allowed as gratuitous offsets under the Indian Claims Commission Act. (Kiowa, Comanche and Apache Tribe of Indians, supra.)

Our conclusion that the costs of purchasing these tracts are not allowable as gratuitous offsets is reenforced by the circumstance, mentioned above, that some of the Indians who were selected to live on the tribal lands of the Yomba and South Fork Reservations are apparently not Western Shoshones. There being no way of separating the interests of the Western Shoshones from those of the Paiutes and others who are

members of the new reservations, we conclude that expenditures by the defendant for ranches which became the tribal lands of the Yomba and South Fork (or Temoak) Reservations could not create a tribal obligation against the Western Shoshone Identifiable Group because the plaintiff Identifiable Group was not the beneficiary of these expenditures. The tracts were not purchased to benefit the plaintiff group and did not become a part of the plaintiff's land. See Washoe Tribe v. United States, 24 Ind. Cl. Comm. 107 (1970).

In addition to the considerations just discussed, the land purchases here involved are subject to disallowance in accordance with another ruling of the Commission and the Court of Claims. All but three of the tracts for which gratuitous offsets are claimed are within the aboriginal land area of the plaintiff as defined in the title decision in this case (11 Ind. Cl. Comm. 413-14). In United States v. Pueblo de Zia, 200 Ct. Cl. 601 (1973), the Court affirmed, in part here pertinent, the Commission decision (26 Ind. Cl. Comm. 218 (1971)) disallowing offsets claimed for parcels of land within the former aboriginal land area of the plaintiffs which the United States acquired and transferred back to the plaintiffs more than twenty years after the plaintiffs' title had been extinguished. In S'kallum v. United States, (39 Ind. Cl. Comm. 134, 137-38 (1976)), the Commission relied on this ruling in the Pueblo de Zia case, and again refused to allow claimed offsets for tracts, situated within the plaintiff's aboriginal land area, which the United States purchased in trust for

the plaintiff tribe. The rationale in these cases for disallowing gratuitous offsets for parcels within the aboriginal land area which the defendant returned to the plaintiff many years after plaintiff's title was extinguished stems from the inequity of charging against an award to the plaintiff the increase in the value of the land between the time the defendant took it, depriving the plaintiff of its use, and the time of its return to the plaintiff. United States v. Pueblo de Zia, supra, at 613-22; 26 Ind. Cl. Comm. 236-37. The offsets claimed for purchase of all but three of the tracts here involved are subject to disallowance in accordance with the Zia and S'kallum cases, supra.

Two of the three tracts which are outside of the plaintiff's aboriginal area and are claimed as offsets consist of separate 40-acre parcels situated in different townships. These two parcels were part of the privately owned 2,161.48-acre Bolster-Doyle ranch. Eighty acres of land in this area is not considered sufficient to support a single family. The offsets claimed for the parcels may not be allowed as the parcels do not amount to a tribal benefit.

The third tract which is outside of the plaintiff's aboriginal area as defined by the Commission is the Jarvis tract in Idaho containing 160 acres, discussed above. The tract is within the portion of the Duck Valley Reservation set aside for Paddy Cap's band of Paiutes. The price of the Jarvis tract is not a proper gratuitous offset, as the defendant has not shown that the plaintiff benefited from its purchase.

For the reasons discussed herein, gratuitous offsets for the above-identified tracts will be disallowed.

Soil and Moisture Conservation Expenses

The defendant's claim for gratuitous offsets totaling $40,047.14 for soil and moisture conservation expenses for the years 1941 through 1951 apparently involves amounts which benefited only the Duck Valley Reservation lands.

A primary purpose of the Soil Conservation Act of April 27, 1935, as amended (16 U.S.C. §§ 590a et seq.), under which the expenditures were made, was to protect and improve the country's soil and moisture resources. It was also one of a series of emergency measures intended to relieve stricken agricultural areas and unemployment during the 1930's. The act granted broad authority to carry on engineering operations, experimental cultivation projects, joint and cooperative projects for soil and water conservation with other governmental agencies, and other functions. Section 1(a) of the act authorized the Secretary of Agriculture to [6/]

> conduct surveys, investigations, and research relating to the character of soil erosion and preventive measures

6/ By §6 of Reorganization Plan No. 4 of 1940, effective June 30, 1940, 54 Stat. 1234, the functions of the Soil Conservation Service in the Department of Agriculture with respect to soil and moisture conservation operations conducted on lands under the jurisdiction of the Department of Interior were transferred to the Department of Interior, to be administered under the direction and supervision of the Secretary of the Interior through such agency or agencies in the Department of the Interior as the Secretary might designate. (5 U.S.C. Appendix (1970).) Section 15 of Reorganization Plan No. 4 authorized the transfer of funds and property from the Department of Agriculture to other agencies performing functions under the plan, subject to the approval of the Bureau of the Budget and the President.

> needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water . . .

A category of expenditures which may not be claimed as gratuitous offsets under the Indian Claims Commission Act are expenditures under any emergency appropriation or allotment made after March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from unemployment, and for public works and public projects related thereto. In the introduction to the Soil and Moisture Conservation Act, Congress, in declaring its policy of preventing soil erosion, preserving natural resources, controlling floods, and taking related soil conservation measures, expressly included relieving unemployment as a policy objective under the Act. (16 U.S.C. §590a.)

Emergency relief funds and equipment were transferred from the Department of Agriculture to the Department of the Interior for carrying out soil and moisture conservation operations on lands within the jurisdiction of the Department of the Interior in October 1940. It appears that both before and after 1956, the Bureau of Indian Affairs advised various groups of Indians that amounts spent for soil and moisture conservation projects would not be used as offsets in claims cases since the benefits under the soil conservation program were given to non-Indians by the Department of Agriculture. Evan Flory, who had worked before 1940 with the Soil Conservation Service of the Department of Agriculture, became Chief of the Branch of Land Operations, Bureau of Indian Affairs,

Department of the Interior, in charge of irrigation, range management, and soil conservation operations, in which capacity he testified at a hearing on offsets in September 1956 in Docket 63 before this Commission on the claim of the Shoshone Tribe, Wind River Reservation, Wyoming. Mr. Flory discussed the soil and moisture conservation program on Indian lands generally as well as on specific reservations, and explained that the benefits and services to Indian and non-Indian lands were similar, and that benefits were not intended to be repaid by non-Indians, that soil conservation services were regarded in large part as projects for relief in stricken agricultural areas. He explained that soil and conservation work, unlike irrigation work, was never done on a reimbursable basis, and that conservation work was intended to conserve and protect the soil and water resources "for the nation and for the people in the future, so that they will continue to eat, so it is for the national benefit and that is the basis on which the funds are appropriated for the national benefit." This was true of much larger scale operations on private lands for non-Indians. The Bureau of Indian Affairs concluded in 1957 that the cost of technical assistance and guidance under the soil and moisture conservation program should be regarded as necessary administrative expense of the Bureau in its capacity as trustee of Indian lands.

We conclude that during the period 1941 through 1951 for which soil and moisture expenditures by the United States are claimed as offsets

against the Western Shoshones, these expenditures, in substantial part, were for the relief of stricken agricultural areas and within the category of expenditures which may not be claimed as offsets under the Indian Claims Commission Act.

Moreover, amounts spent for educational purposes, like expenditures under relief statutes of various kinds, are among the purposes for which gratuitous offsets may not be claimed under the Indian Claims Commission Act.[7/] An important part of the soil and moisture conservation program on Indian reservations consisted of survey and planning services and demonstration and training projects. Classes, field demonstrations, community meetings, group and individual discussions, tribal newspapers, bulletin boards, and special bulletins and articles were used by soil conservation specialists in teaching conservation practices to the Indians. We conclude that a substantial part of the soil and moisture conservation program on Indian lands was educational. Salaries of technicians and administrators of the program, travel costs, supplies for demonstrations, from seed and nursery stock to tractors and cars used by the service, are properly regarded as educational expenditures which may not be allowed as offsets under the Indian Claims Commission Act.

7/ The excepted categories were intended to be interpreted broadly under the act. The Conference report on the bill which became the Indian Claims Commission Act emphasized that the exception of administrative, educational, and other expenses as claims for which gratuitous offsets might not be asserted were to have a broad interpretation, stating, inter alia, that by 'educational' expense, for instance, was meant all expenses connected in any way with the education of the Indians, such as the construction of buildings, the construction and maintenance of public utilities for these buildings, the transportation of educational supplies, board and room for the children, the pay of all employees, etc. H.R. Rep. No. 2693, 79th Cong., 2d Sess. (1964). The particular statement here relied on is contained in a supplemental statement of the House Mangers on the Conference Report in Appendix to Cong. Record, 7/30/46, A-4923 at A-4924.

We note also that for the year 1949, the defendant claimed offsets for soil and moisture conservation expenses totaling $20,928.10. The General Services Report herein shows that a total of $28,281.22 was spent for soil and moisture conservation operations under jurisdiction of the Western Shoshone agency in 1949. The allocation of 74% of the total expense to service which the plaintiff received is based on the proportion of the Western Shoshone population to all Indians under the jurisdiction of the Western Shoshone agency at the time.

It is impossible to determine from available records of expenditures for soil and moisture projects the proportion of the total expended that was used to benefit plaintiff's lands as compared with other lands under the jurisdiction of the Western Shoshone agency (e.g. Paiute lands). Assuming tribal consent, the factors that determined which of the lands within an agency's jurisdiction received the benefits of soil and moisture conservation expenditures were, (1) the condition of the land and water resources within the agency's jurisdiction, and (2) the physical factors affecting their improvement, not the relative population of the Western Shoshones and other Indians in the area upon which the defendant relied in allocating these expenditures. There is nothing in the record to support the defendant's allocation.

Inasmuch as the amounts claimed as offsets for soil and moisture conservation expenses for the years 1941 through 1951 included amounts for educational, agency, and administrative expenses, for supplies and

equipment which were not shown to have benefited plaintiff's lands in the ratio for which those lands were charged, and also consisted of expenditures under one of a series of emergency measures intended to relieve stricken agricultural areas and unemployment during the 1930's, these expenditures will be disallowed in their entirety.

Before continuing consideration of specific gratuitous offsets, a contention of the plaintiff's which applies generally to the claims in this proceeding will be considered. We noted above that between 1873 and 1875, Indian agents reporting from Nevada to the Commissioner of Indian Affairs estimated that there were between 2 and 4 thousand Western Shoshones living in and near their aboriginal use area. A later report indicated that about one-third of the Western Shoshones had moved to the Duck Valley Reservation by 1880. Many of those who did not move to the reservation received no benefit from the expenditures for which the United States is claiming offsets. The plaintiff argues that where, over the years, a large number of the Western Shoshones consistently received no benefit from the expenditures, such expenditures did not constitute a tribal benefit within the meaning of Section 2 of the Indian Claims Commission Act (60 Stat. 1049-50), in accordance with Commission rulings disallowing offsets where expenditures claimed are so small as to indicate that only a few individuals could have benefited. (Seminole Nation v. United States, Docket 150, 6 Ind. Cl. Comm. 345, 349 (1958)), aff'd 146 Ct. Cl. 171 (1959).)

The United States contends that the establishment of the Duck Valley Reservation complied with the Treaty of Ruby Valley, that the Indians were urged to move there so that their needs could be more readily met than if they remained scattered, that the official policy of the United States over a long period of time has been to limit its relationships with Indians to those living on reservations, and, in effect, that the number of Shoshones living off the reservation in comparison with those living on it is not a matter in issue in this proceeding.

After 1877, the United States assisted the Western Shoshones who settled at the Duck Valley Reservation and presumably would have helped any others who wanted to live there. In the circumstances, we conclude that the fact that a substantial number of plaintiff's members did not move to Duck Valley Reservation is not, by itself, a reason for disallowing as offsets gratuitous expenditures for those who lived there.

The defendant asserts that it determined the plaintiff's share of expenditures reported by the General Services Administration for the Western Shoshone and Carson Agencies by allocating against the plaintiff the percentage of expenditures indicated by the proportion of Western Shoshones to the number of other Indians under the jurisdiction of the agencies. For most years, the accounting report for the plaintiff herein listed disbursements under numbered schedules with a heading like, "Disbursements for the Indians of the Western Shoshone agency." For the years covered by disbursements listed under such a heading, the defendant, in claiming offsets, apportioned expenditures between the

Western Shoshones and the Paiutes in accordance with the percentage of the population of the respective tribes to the entire Indian population of Duck Valley Reservation. However, for the years 1885 through 1905, for which expenditures are reported by the General Services Administration under Disbursement Schedule 9 headed:

> Disbursements for the Western Shoshone Indians, Western Shoshone Agency, Nevada, under the appropriation 'Support of Shoshones in Nevada',

the defendant allocated the full amount of the listed expenditures against the plaintiff without deducting a percentage for Paiutes and others living on the Duck Valley Reservation. There is no evidence that amounts spent for the Paiutes were disbursed separately during the years in question from the amounts spent for the Western Shoshones. However, appropriation acts for some of the years here under consideration after fiscal year 1887 indicate that the Paiutes on the Duck Valley Reservation were designated as entitled to share in appropriations for Walker River and Pyramid Lake Paiutes and were not expressly named in amounts provided for the support and civilization of the Shoshones in Nevada. (Cf. Indian Department Appropriation Act of June 7, 1897, 30 Stat. 62, 78-9, making appropriations for the Walker River and Pyramid Lake Paiutes, which expressly named the Paiutes on the Western Shoshone Reservation in the appropriation for the Paiutes, with the Act of March 3, 1901, 31 Stat. 1058, 1072 et seq., appropriating Indian Department funds for the fiscal year ending June 30, 1902, which contained no special provision for the

Paiutes of the Western Shoshone Reservation.) Appropriation provisions for the Paiutes for some of the years included in Disbursement Schedule 9 contained no separate provision for the Paiutes of the Western Shoshone agency. 8/ Accordingly, the defendant's charging the plaintiff with 100% of amounts spent for provisions for those years was wrong because Paiutes who were living at the Duck Valley Reservation during these years must be presumed to have received their pro-rata share of the provisions distributed on the reservation from and after 1886 (See finding No. 72 herein indicating that at least 103 Indians who settled on the Duck Valley Reservation in 1880 planned to stay permanently, and that land was added to the reservation in 1886 for Paddy Cap's band of Paiutes, among others.) The cost of the Paiutes' share presumably came from amounts disbursed for the support of the Western Shoshones in the absence of evidence of other appropriations for the Duck Valley Reservation Indians. We conclude, therefore, that the defendant's claimed expenditures under Disbursement Schedule No. 9 should be reduced from 100% during the 6 years indicated below to reflect the fact that approximately 115 Paiutes who settled permanently on the reservation were living there in 1885 and 1886, and that thereafter the number of Paiutes and Western Shoshones living on the reservation as shown in the reports of the Commissioner of Indian Affairs and listed in defendant's amended, revised answer may be accepted as correct.

8/ The years involved when appropriation acts contained no separate provision for disbursements for the Paiutes of the Western Shoshone agency were: for fiscal year 1886, Act of March 3, 1885, 23 Stat. 362, 378; for 1887, Act of May 15, 1886, 24 Stat. 29, 42-3; for 1901, Act of May 31, 1900, 31 Stat. 221, 225; 1902, Act of March 3, 1901, 31 Stat. 1058, 1072; 1903, Act of May 27, 1902, 32 Stat. 245, 256; 1904, Act of March 3, 1903, 32 Stat. 982, 993.

Provisions

The defendant asserts that between October 1, 1863, and June 30, 1951, it gratuitously expended $54,688.96 for provisions for the Western Shoshones for which it requests offsets.[9/]

The Commission has found that expenditures for other than treaty goods which may have been made on behalf of the plaintiff before 1878 were for the benefit of a few individuals at most. When Duck Valley Reservation was set apart in 1877, many of the Western Shoshones were sick, destitute, and homeless. The distribution of a few farming utensils, a small supply of seeds, medicine, and perhaps other provisions before 1878 did not constitute a tribal benefit at a time when plaintiff's population was estimated at between 2,000 and 4,000. (finding nos. 71, 72.) We conclude that expenditures listed by the defendant of $90.40 in 1873 and $139.22 in 1878 are too small to have amounted to a tribal benefit, and will be disallowed.

9/ The plaintiff has asked the Commission to establish a per-se rule that no expenditures for provisions will be permitted as gratuitous offsets to correspond with the statutory prohibition of the Act of October 27, 1974, Pub. L. No. 93-494, that provisions and food-related expenditures may not be deducted as payments on the claim. The plaintiff asserts that such a rule would be warranted on grounds that the Commission has discretion to determine which gratuitous offsets to allow and that its authority ought not to be used to deduct, as gratuitous offsets, expenditures for food-related purposes. The defendant replied that it is entitled to offsets for all gratuitous expenditures including those for food, rations, or provisions, since the 1974 amendment eliminated such expenditures only as payments on the claim and did not apply to expenditures for gratuities. Without prejudice to the merits of the plaintiff's request we are not considering it in this proceeding because we have found that the expenditures for provisions here involved are amounts which must be disallowed as gratuitous offsets for other reasons.

Over much of the time for which gratuitous offsets herein are claimed, it was the policy of the United States to require that Indians earn as much of their living as possible. In 1902, when the population of Duck Valley was about 450, the Superintendent of the Western Shoshone Agency wrote to the Commissioner of Indian Affairs that the agency supplied provisions to only 65 old people at the time of the report, explaining that it was the policy to limit the number receiving provisions to those who would suffer without the rations or had no means of earning their livelihood.

Section 3 of the Act of March 3, 1875 (18 Stat. 420, 449), provided:

> That for the purpose of inducing Indians to labor and become self-supporting, it is provided that hereafter, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe: Provided, That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient.

Regulations of the Indian Office, Department of the Interior, as revised in 1884 and 1904, required that the Indian Agents' reports indicate whether labor had been performed in accordance with the above-quoted provisions of the 1875 Act. The regulations provided that each able-bodied male Indian was to be afforded an opportunity for labor, but stated, in substance, that the agents should not enforce by an exact measurement the statutory

requirement that the Indians within the purview of section 3 perform service on the reservation in an amount equal in value to the supplies to be delivered. An 1884 regulation provided that generally the issues to those who labor must not exceed the daily ration, and never more than double that amount, and then only in rare cases and as a reward for unusual zeal and industry. A 1904 regulation stated that Indians should not be required to perform labor in payment for supplies if the work would be for the benefit of the agency, and more properly performed by Government employees. Another regulation provided that Indians who labored for the benefit of themselves or the tribe in payment for supplies issued were not to be regarded as employees. Nonetheless, allowances for Indians who were required to perform labor were to be distributed to them only upon condition of the performance of such labor under the rules and regulations which the agent might prescribe.

Reports of Western Shoshone Indian agents to the Commissioner of Indian Affairs, some of which are quoted from in Finding 80(b), indicate that shortly after the time the Duck Valley Reservation was established, from 1880 through 1904, the Western Shoshones performed a substantial amount of construction and other miscellaneous work in building and maintaining agency, school, and hospital facilities, and in the care of roads, that the Indians were issued rations in exchange for this work and that for some years, the work was estimated by the Western Shoshone agents as being worth several thousand dollars.

The value of rations provided in lieu of payment of wages for construction and other work in building and maintaining agency, school, and hospital facilities and in the care of roads represented administrative, educational, agency, or health expenses, each of which is among the categories excluded by statute as a basis for gratuitous offsets. If the defendant had paid non-Indian labor for road, agency, and school construction work, such expenditures would have been barred as offsets, being administrative or school costs. Expenditures for such purposes, without regard to whether the tribe benefited from them, are not allowable offsets because the statute excludes them. The categories of expenditures which the statute excepts from allowance as gratuitous offsets were intended to be interpreted broadly (see note 7).

We note that the Indians were also credited under section 3 of the 1875 Act for building houses and other improvements for themselves and for other members of the tribe. Thus, the 1884 report to the Commissioner stated that during the year the Indians built 3 houses for themselves and the 1888 report stated that they had built 5 log cabins and 2 frame houses for themselves during the year. Work such as building houses for the benefit of members of the tribe is not intended to be affected by this discussion of agency, road, school, hospital, and similar construction work, the costs of which are excluded by statute from gratuitous offsets. Findings herein also describe the work of the Indians in transporting freight and supplies from the railroad to the agency and the amount earned during designated years for that work. The transportation of freight was

administrative work for which the Indians were paid wages, and since offsets were not claimed for those wages, that work, also, is not affected by the discussion about construction and other administrative work performed by Indian labor in exchange for provisions, agricultural equipment, clothing, and similar goods for which offsets are here claimed.

Information on the construction of agency facilities on Duck Valley Reservation indicates that the pay for unskilled Indian labor at $1.00 a day in 1883 was calculated at substantilly lower rates than amounts paid to unskilled non-Indian labor in the area. A number of the Commissioner's reports contain estimates of the value of some of the construction work which the Indians performed on the reservation, specified the hours worked for certain agency and administrative purposes, and gave quite detailed information about the work of the Indians on the reservation. For instance, in 1894, the Indians performed 320 days of labor on the public highways of the reservation; in 1895, they performed 285 days' labor on agency roads. In 1902, they performed 80 days' labor on reservation roads, and in 1904, they performed 50 days' labor thereon. This and other information in the findings, including the rate of pay at which the Indians' work was valued, indicate that the record contains sufficient information about the value of road and administrative construction work so that the defendant might have deducted from the offsets claimed herein a fair estimate of the cost of rations issued in exchange for at least such of that work as is described in Commissioners' reports.

The years when payments in rations in exchange for work should have been deducted from the total cost of provisions claimed as offsets were from 1880 through 1904. As the cost of provisions furnished in exchange for school, agency, and administrative work are not proper offsets under the Indian Claims Commission Act, and these costs are not shown to have been deducted from amounts claimed as offsets, expenditures for the years 1880 through 1904 for provisions will not be allowed as gratuitous offsets. (Kiowa, Comanche and Apache Tribe of Indians, supra, at 309-310.)[10/]

The defendant submitted very few vouchers as representative of expenditures for provisions during the years between 1905 and 1938. Three separate vouchers or claim settlements showing the purchase of beef were put into evidence for the years 1905, 1907, and 1909. Each of these indicates that some beef was purchased for use of agency Indians and some was purchased for school pupils. The documents do not show that

10/ We note that the holding in Red Lake, Pembina and White Earth Bands v. United States, 164 Ct. Cl. 389, 397 (1964), to the effect that that record did not support the claim therein that offsets allowed for goods were payments to individual members for labor, but, instead, reflected gratuities spent for the benefit of the claimants as entities, does not contradict the ruling in Kiowa which is followed here.

The ruling in the Kiowa decision that is here relied on did not turn on whether individual Indians or the tribe as an entity benefited from the expenditure. The holding in Kiowa here under consideration was that where evidence in the findings showed that the Indians performed agency or administrative work in exchange for rations, the cost of such rations were an administrative expense. Expenditures for such administrative purposes, whether or not the tribe benefited from them or whether the work was performed by Indians or non-Indians, are excluded as offsets by statute. The decision in Red Lake, supra, is inapposite here as it does not rule on the allowance of gratuitous offsets which include the cost of rations in exchange for administrative work.

school costs were deducted from the claimed offsets. Neither the amended answer nor the accounting report show, generally, whether provisions were purchased for the agency, the school, or the entire tribe. Only the vouchers and the supporting documents sometimes show the intended use of the items purchased. Nothing in the accounting report suggests that disbursements for schools or for any other purpose were omitted from disbursements in part III of the report which part was included in response to the Attorney General's request for a statement of gratuity payments for this docket. The defendant's claim for gratuitous offsets is based on this portion of the accounting report.

A written statement discussing the accounting report was submitted for the plaintiff. It was prepared by Paul Gillis, a certified public accountant from a private firm who has worked on many Indian claims accounting cases over a period of ten years. This report, and Mr. Gillis' testimony as plaintiff's expert at the hearing on offsets, tended to increase the uncertainty as to whether costs for food for pupils, an educational cost which is not allowable as a gratuity, had been deducted from amounts claimed for offsets for provisions in this case. The matter was not clarified by cross-examination or other testimony at the hearing, nor was it explained by the defendant in any other way. Since the record does not establish that the costs of provisions for schools have been eliminated from the claimed offsets, the defendant has not met the burden of showing that it is entitled to the offsets.

The remaining vouchers submitted as representative of expenditures for provisions during the period from 1905 through 1937 are: a voucher for $85.00 worth of sugar in 1905, a claim settlement for $47.20 worth of coffee in 1911, and a claim settlement for 8,526 pounds of flour in 1913 (purchased in August 1912). About one-half of the Duck Valley Reservation population was Paiute during these years. Consequently, one-half of each of these expenditures would have been allocable to the plaintiff Shoshones. Reports of the Commissioner of Indian Affairs indicate that most Indians did not receive rations as a principal means of livelihood between 1905 and 1937. As early as 1902, when the Shoshones at Duck Valley numbered 226, rations were supplied to about 33 of the old or disabled Shoshones who had no means of earning their livelihood. During fiscal year 1911, when the $47.20 spent for coffee was representative of provisions supplied by the defendant for which offsets are claimed, 8 able-bodied adults and 16 physically or mentally disabled persons, about one-half of whom were Shoshones, received rations totaling $1,634.67. The number of Shoshones on the reservation that year was 374. Most of the sum spent for rations in 1911 was used for rations for the disabled, costs which are health costs excluded as gratuitous offsets by statute.

In 1912, when the Shoshone population was 299, rations for which labor was performed were issued to 11 adults and 3 children. In addition, rations for which no labor was performed were issued that year to approximately 31 physically or mentally disabled Shoshone adults or children. Rations for the 31 disabled Shoshones were costs for health care which are

excepted as gratuities by statute. Rations for the 11 adults and 3 children who performed labor were insufficient to amount to a tribal benefit.

In 1913, rations were issued only to the physically or mentally disabled or in payment for the performance of labor. The Shoshone population that year was 307. Of this number, 20 adults and 5 minors received rations in payment for labor performed. In addition, 24 Shoshones who were physically or mentally disabled also received rations. As in the two previous years, the cost of rations for those who were disabled was a health cost which is not an allowable gratuity. Some or all of the 20 adults and 5 children who were paid through the issuance of rations may have been performing agency or school functions which would exclude allowance of a gratuitous offset for rations issued to them, since the cost of such rations would be an administrative expense, as discussed earlier. In any event, the number of individuals involved is too few to warrant a conclusion that rations paid to them for labor constituted a tribal benefit.

For the reasons discussed, we conclude that the evidence submitted by the defendant as representative of amounts spent for provisions between 1905 and 1937 for which offsets are claimed fails to establish that expenditures for schooling and health, or payments to individual Indians for labor, were deducted from the amounts claimed. Offsets for provisions during these years will, therefore, be disallowed.

Many of the annual reports of the Commissioners of Indian Affairs between 1870 and 1935 have been put into evidence in this case by the

parties. The data on the issuance of rations to Indians through the Western Shoshone Agency during 1905 and from 1911 through 1913 are in the annual reports of the Commissioner of Indian Affairs for those years. The reports for these particular years were not offered in evidence by the parties. As official reports by officers of the United States, we take judicial notice of them.[11/]

The evidence for the offsets asserted for provisions for 1938 and 1939 is a voucher showing the purchase of coffee for $87.72, only a part of which would have been allocable to the plaintiff. The item is listed on a voucher along with a number of items ordered for the agency. Some individual Indians may have benefited from the expenditure.

In 1940 and 1941, when about 960 of plaintiff's members were living on the reservation, expenditures of $34.17 in 1941 and $56.33 the following year are too small to have amounted to tribal benefits. The offsets claimed from 1942 through 1944 were disbursed from funds for the support and rehabilitation of needy Indians. Expenditures from these funds are not proper offsets.

11/ That the Indians at the Duck Valley Reservation generally did not share in many of the provisions purchased with funds for the support of Indians of the Western Shoshone agency was frequently indicated in the reports of the Indian agents to the Commissioner. Thus, in 1889, the agent for the Western Shoshone agency reported that their lands had suffered and crops were shrivelled from the most severe drought known in the area. In addition to the drought, the Indians living at any distance from the agency suffered from the ravages of ground squirrels. The Government crop was protected from the squirrels by the use of strychnine, and some of the Indians living near the agency were induced to use the poison, but the majority of them refrained from doing so because ground squirrels were one of their chief articles of diet in the summer time, and they did not want to take such risks.

In Kiowa, Comanche, and Apache Tribes v. United States, supra, the Commission considered a claim for offsets by the defendant for provisions purchased over a period of time when some 30 Indian employees of the agency received rations as part of their pay, the amount of which was not shown but which would represent an administrative expense. Furthermore, beef purchased during part or all of the time for which offsets were claimed was used for agency or school purposes, which purposes are excluded as a basis for offsets. In the Kiowa opinion, supra, the Commission disallowed the claimed offsets for provisions where the defendant had not eliminated from the claim the above-mentioned excluded expenses.

For some of the years involved in this proceeding, the distribution of provisions was limited to sick, needy, and indigent individuals, and to persons who earned provisions by their labor for agency, school, hospital, road construction, and other administrative purposes. Moreover, as in the Kiowa case, the cost of agency and school supplies may be included in the offsets claimed by the defendant for provisions. The defendant presumably has the information necessary to eliminate from the expenditures for provisions, the amounts spent for excluded categories and for purposes which otherwise are not allowable as offsets under the Indian Claims Commission Act. As in the Kiowa case, supra, the defendant's failure to separate from the total amount claimed for provisions the amounts spent for purposes excluded by statute or otherwise

improper for offsets requires that the Commission reject the total claim for offsets for provisions during the years for which the improperly included amounts should have been deducted.

Agricultural Implements and Equipment

Between April 16, 1877, and June 30, 1941, the defendant asserts that a total of $18,432.09 was gratuitously spent for agricultural implements and equipment for the plaintiff.

Vouchers and other data in the record show that equipment purchased for the agency in 1879 included 5 wide-tract wagons for $255. Additional wagons and wagon parts were purchased in 1885, 1890, and 1897, and 1906 as shown by representative vouchers in defendant's Exhibit 0-24. Wagons were essential for transporting all reservation supplies to the agency from the railroad at Elko, a distance of 120 miles, and because of the difficult, mountainous terrain, they received hard use, and often needed repair and replacement. The costs of wagons, wagon parts, and harness, together, made up most of the expenditures shown by the defendant's representative vouchers for agricultural implements and equipment. The wagons were used to a large extent for transporting supplies for the agency, school, hospital and other administrative purposes, and these costs must be disallowed, as are all transportation costs. Red Lake, Pembina, and White Earth Bands v. United States, 9 Ind. Cl. Comm. 457, 474-5 (1961), aff'd in part here relevant, 164 Ct. Cl. 389 (1964).

Descriptions of farming conditions at the Duck Valley Reservation in the early reports of the Indian Agents to the Commissioner indicate that the agency equipment for harvesting grain crops was inadequate. By 1893, the Indians had simple farm equipment but almost none of them had machinery for harvesting their grain crops except a few who bought their own from wages earned working on neighboring ranches. A combined mowing and reaping machine bought in 1885 was used primarily for the benefit of the agency and the school, though the Indians also obtained some benefit from its use. However, since the interest of the agency and the school was paramount the defendant improperly claimed it as an offset.

There is evidence that some agricultural equipment was furnished to individual Indians in partial payment for agency, school, and hospital construction and road work by Indians. Since the costs of such work are not allowable as offsets neither may the costs of agricultural equipment issued in exchange for such work be allowed.

Tribal funds were used to some extent to purchase stock and agricultural implements under agreements by which the defendant purchased and supplied such items to the Indians who agreed to use tribal funds to reimburse the defendant for the purchases. The accounting report shows that $18,596.91 of the plaintiff's tribal funds were disbursed to pay for agricultural implements and equipment between 1908 and 1948, but the report is not sufficiently detailed to indicate the extent to

which amounts may have been transferred to the defendant as reimbursement for items supplied by the United States under reimbursable agreements with plaintiffs.

The accounting report does indicate that disbursements for agricultural implements and equipment claimed as offsets for 1942 were made from funds for the support and rehabilitation of needy Indians which must be disallowed here, having been spent for the benefit of needy individuals and not for the entire tribe. In addition, portions or all of the amounts claimed for this category of expenses for many years were disbursed for the Western Shoshone agency. These must be disallowed as there is no evidence that such expenditures for the agency were other than agency costs which are excluded by statute from allowance as gratuities.

In the circumstances, the defendant needed to show that the claimed offsets excluded the cost of any implements or equipment for which the United States was reimbursed by tribal funds. The use in the accounting report of warrant numbers and dates only as identification of disbursements from tribal funds makes it impossible to determine, on this record, the extent to which such funds may have been used to reimburse the defendant for purchases of farming equipment for which many of the remaining offsets are claimed. Considering the fact that under reimbursable agreements it was the practice of the United States to use its own funds to purchase equipment.

supplied to Indian tribes whose tribal funds were then transferred to the defendant for reimbursement of the price of the items, as agreed to by the Indians, the defendant presumably has information indicating the extent to which the costs of farming equipment were repaid from tribal funds under reimbursable agreements. In this case, where the accounting report and other evidence shows substantial use of tribal funds for buying a type of equipment for which offsets are claimed by the defendant, the reliance of the amended answer on the accounting report alone, which identifies disbursements from tribal funds during most of the years involved by warrant number and date only, is insufficient to show that the defendant is entitled to offsets claimed for such items. The evidence of record herein has cast a burden upon the defendant to show that tribal funds were not used to reimburse the United States for the farming equipment for which offsets are claimed in order to support the claim.

We conclude that the defendant has not met the burden of proving which, if any, of the amounts claimed as offsets for agricultural implements and equipment are allowable. The claimed offsets in this category will be disallowed.

Clothing

The defendant requests gratuitous offsets in the amount of $15,120.08 for expenditures for clothing for the plaintiff between 1885 and 1944,

and submitted vouchers or invoices which identify a few of the items of clothing purchased for each of the years 1884 through 1902 except 1892. The vouchers, considered along with the number of Indians living at the Duck Valley Reservation and with the number of Indians who performed construction and other work for the agency, indicate, almost uniformly, that the quantity of clothing purchased was insufficient to amount to a tribal benefit. In addition, the quantity and the type of some of the items purchased were indicative of expenditures for school and agency purposes, or for issuance to Indians in exchange for work performed for the agency. A few items may have benefited individual Indians. Expenditures for these purposes are not allowable offsets. Furthermore, amounts claimed for offsets for clothing should have excluded, and did not, amounts for clothing 115 destitute Paiutes for the years 1886 and 1887 and amounts spent in 1901, 1902, and 1903, when Paiutes made up about one-half of the population. The vouchers submitted as representative of the claimed expenditures are considered individually.

The first representative voucher is attached to an invoice dated September 2, 1884, which lists 48 pair of men's boots, 60 pair of boys' boots, 100 pair of men's shoes, 50 pair of boys' shoes, and 6 pair of men's rubber boots as being purchased for the Western Shoshoe agency. In 1884, the Indian population at Duck Valley Reservation was 836. More

than 3,000 non-reservation Indians were also under the jurisdiction of the agency. Some of the sick, aged, and destitute non-reservation Indians sometimes received supplies from the agency. Seventy Indians were listed as performing manual labor in civilized pursuits in 1884. This labor consisted, in substantial part, in construction and repair work for the agency, such as constructing and repairing agency and school buildings and roads. The number of children between the ages of 6 and 16 on the reservation was approximately 167, about 20% of the reservation population. In 1884, the school population was 51. The nature of the work and the ruggedness of the mountainous terrain of the reservation required that the Indians who farmed, constructed buildings, irrigation ditches, fences, roads, bridges, and similar work have boots and shoes. The superintendent, blacksmith, agency farmer, school teacher, physician, and any other employees of the agency and the school needed shoes. Considering the nature of the work, some may have needed more than one pair of boots and shoes. Similarly, school boys, who helped with the school livestock, maintained the school garden, and at times helped with other agency work needed boots and shoes.

Accordingly, the order for 100 pair of men's shoes and boots in 1884, when approximately 76 men needed shoes and boots for performing administrative and agency work, is not evidence of an allowable gratuity.

Most of the 76 men were Indians who performed construction and similar work for the agency. Supplies such as shoes issued to them in partial exchange for such work are not evidence of allowable gratuities because they represented administrative expenses. In any event, since the population of the reservation was 836 that year, even if 70 persons had received shoes as a gratuity, the quantity was insufficient to amount to a tribal benefit. Similarly, the order for 60 pair of boys' boots and 50 pair of boys' shoes when the school population was 51 was not a proper claim for offsets when the number of children of school age (6 to 16 years) on the reservation was approximately 167. Although the invoice does not show that the boys' boots and shoes were intended for those in school, the quantities ordered suggests that this was so. Clothing for individual Indians or for school purposes is not a proper gratuitous offset.

An invoice of September 3, 1885, indicates the purchase of 100 pair of men's shoes, 50 pair of men's boots, 20 pair of boy's boots and shoes, and 125 pair of women's shoes. That year, the permanent reservation population was about 400, of whom 300 were Western Shoshones. The agency also had 3,300 non-reservation Indians under its care. Eighty Indians on the reservation were listed as doing civilized labor, part of which consisted in construction work for agency and administrative purposes. In addition to the men's and women's shoes and boots which were needed by agency and school employees, most of the rest of the shoes,

except those for the boys, were presumably issued in exchange for labor by as many as 80 Indians who supplied produce such as butter or did work for agency, school, or administrative purposes, the costs of which are not allowable offsets.

The average school attendance in 1885 was about 19 pupils. The school age population on the reservation was about 60. The number of boys' boots and shoes ordered (20 pairs) suggests that the expenditures were for the benefit of school pupils, an educational cost not allowable as an offset. The purchase was for too few to amount to a tribal benefit.

An invoice of August 19, 1886, lists an expenditure of $10.75 for the purchase of 8 dozen pair of children's and misses woolen hose. In the fall of 1886 there were 380 Shoshones and 115 destitute Paiutes living on the reservation. The number of school age children was about 100 and if children under 6 and girls between 16 and 18 are also considered, the number was substantially greater. The purchase may have been for school purposes, or to benefit individual Indians. The quantity of hose available after excluding those necessary for school and agency purposes, was not sufficient to amount to a tribal benefit.

An invoice of October 25, 1887, shows the purchase of 40 boys' duck overalls and 100 men's overalls. The total reservation population was 411, 115 of whom were Paiutes for whom no separate funds had been appropriated. The average school attendance in 1887 was 35. The men's overalls may have been issued in exchange for agency and administrative work or to benefit individual Indians. The number of boys' overalls

purchased corresponds to the number attending school. In any event, the quantities are insufficient to amount to a tribal benefit.

The purchase of 50 boys' pants and 50 men's pants is shown by an invoice of September 14, 1888, when the population was 475, 71% of which was Shoshone. The average attendance at school that year was 53. The purchase is not evidence of an allowable offset for the same reasons as those given for 1887.

An invoice of August 20, 1889, lists the purchase of 25 boys' overcoats. The total population of the reservation in 1889 was 477, 72% of which was Shoshone. School enrollment for that year was 50. 109 children of school age lived on the reservation. The expenditure was not a tribal benefit. The quantity of boys' coats purchased suggests that they were intended for school pupils and are therefore subject to disallowance on that ground also.

An invoice of October 15, 1890, shows the purchase of fifty men's jeans coats. In 1890, the population of the reservation was 587, 384 of whom were Shoshones. The Commissioner's report shows 117 male Shoshones above the age of 18 that year. If the purchase were allocated according to population, approximately 33 coats may have been issued in exchange for agency construction, road, or other administrative work by Shoshones, or issued to individuals. In any event, the quantity purchased was not sufficient to represent a tribal benefit.

In 1891, 25 pair of men's shoes, 25 pair of boys' shoes, 50 pair of women's shoes, 25 pair of misses shoes, and 25 pair of children's

shoes were purchased, according to an invoice of August 20. Of the reservation population of 590, 62% or 367 were Shoshones. The quantity of shoes purchased for adults was insufficient to amount to a tribal benefit and may have been issued in exchange for agency, road, and other construction work. There were 209 children on the reservation in 1891, 150 of whom were of school age. Of these 150, 55 were enrolled in school. The children's, boys, and misses shoes may have been for the benefit of school pupils and not allowable as a gratuitous offset. In any event, the purchase would have benefited less than one-half of the children on the reservation and was not a tribal benefit.

An invoice of July 31, 1893, lists the purchase of 25 pair of women's shoes, 20 pair of misses shoes, and 25 pair of children's shoes. The reservation population was 628 that year, approximately 67% of whom were Shoshones. There were about 44 children enrolled in school in 1893 out of a population of 242 under the age of 16. The quantity of shoes purchased suggests that the purchase was for the benefit of school pupils and school and agency employees, not allowable as an offset. The quantity was not sufficient to amount to a tribal benefit.

A representative expenditure for 1894 for which clothing offset is claimed is an invoice dated August 28, 1894, showing the purchase of 500 yards of Arlington gingham at five cents a yard. The invoice states that the purchase was for the agency Indians, Western Shoshone Agency. The population of the reservation in 1894 was 623. The nature of the item suggests that it was to be used at school for girls' sewing classes, but

nothing on the invoice or voucher indicates this. However, the report to the Commissioner of Indian Affairs from the superintendent of the Western Shoshone school for 1894 stated that work in the school's sewing room had gone on steadily, with a large amount of work being accomplished including the making of 31 gingham dresses and 47 gingham aprons. There were 50 students in the school in 1894. The superintendent's report furnishes strong support to a surmise that the 25 yards of gingham should have been excluded from offsets claimed because its purchase was primarily for educational purposes.

In 1895, when the reservation population was 618, 68% of whom were Shoshone, the purchase of 192 pair of socks, assorted sizes, for men, women, misses, and children was an insufficient number (approximately 130 pair of socks for 420 Shoshones) to amount to a tribal benefit. The purchase may have benefited school pupils, individual Indians in exchange for agency work, and agency or administrative employees.

Fifty pair of men's shoes and 50 pair of boys' shoes are listed on an invoice of August 14, 1896, as representative of clothing expenditures for which offsets are claimed. The reservation population that year was 620, and school enrollment was 53. Thirty-three Indians performed civilized work in 1896 which included 225 days' labor on reservation roads. The shoes for adults may have been issued in exchange for agency construction and road work by the Indians. The boys' shoes may have been purchased for pupils attending school. The quantities were too few to amount to a tribal benefit.

The purchase in 1897 of 50 shawls was not a tribal benefit when there were approximately 210 women over 14 years of age on the reservation. The purchase may have been made for the benefit of girls in school, for administrative and agency personnel, or for individuals.

The purchase in 1898 of 120 pair of women's and men's socks was too few to constitute a tribal benefit as the reservation population that year was 556.

The remaining invoices show the following purchases:

Year	Items listed on invoice	Reservation Population
1889	50 shawls	572
1900	30 men's shirts	450
1901	20 " coats " " vests " " pr. pants	446
1902	25 caps	450
1916	12 shawls	604

For each of the listed years, the items purchased may have benefited agency or administrative personnel or individual Indians but the quantities were too few to have amounted to tribal benefits.

In addition, the amounts claimed as offsets for clothing expenditures after the year 1904, with no indication of what the expenditures were for, are too small to have amounted to tribal benefits in the following years:

Year	Amount of Offset Claimed	Shoshone Population
1905	$ 3.37	241
1916	5.61	330
1917	14.26	340
"	10.47	340
1934	17.63	285
1937	76.06	522

The amounts claimed for clothing for the years 1942, 1943, and 1944 were disbursed from funds for the support of needy Indians. Amounts spent from such funds are not proper offsets.

The defendant has the burden of showing that it is entitled to the offsets claimed. Findings herein show that a substantial number of Western Shoshones constructed roads, agency buildings, and facilities in exchange for rations. The mountainous terrain and the type of work required shoes and protective clothing. In the early years of the reservation the Shoshones were described as destitute. They could not have obtained the necessary shoes and clothing to do the agency work which they did if it had not been issued by the defendant in exchange for labor. Under the Indian Claims Commission Act, all agency and school costs, such as the cost of constructing roads and buildings are excluded as offsets. Consequently, the cost of clothing necessary for administrative and agency personnel should have been excluded from the amounts of offsets listed in the amended answer.

Much of the clothing for which representative vouchers were submitted was ordinarily supplied only to those who were working for the school

or the agency, or to pupils. A consideration of the invoices in relation to the number of Indians who were performing agency work and the number of pupils attending school strongly supports the conclusion that the cost of clothing for administrative expenses and for school pupils was not excluded from the claimed offsets. Thus, the frequent coincidence of the quantity of items purchased and the number of pupils in school that year, as well as the kind of item purchased (i.e. boys' jackets), supports an inference that school clothing is included in the expenditures shown by the representative vouchers. The invoice showing the purchase of gingham cloth, discussed herein, which almost surely was purchased for the school's sewing class, reinforces the surmise that costs for school clothing and for educational purposes were not excluded from the expenditures for clothing which are claimed for offsets. Accordingly, we conclude that the defendant has not established that it is entitled to the offsets claimed for clothing through 1904 because the weight of the evidence indicates that those expenditures include amounts for school and agency purposes, even though the invoices submitted do not expressly so state. In addition, for many of the years involved, the number of items purchased were too few to amount to a tribal benefit.

In 1886 and 1887, when more than 100 destitute Paiutes had been moved to the reservation, and Congress had made no separate appropriation for them, the amended answer should have, but did not allocate a portion of the clothing expenditures to them. Blankets and tepee cloth issued

about that time were presumably issued to all. Similarly, in 1901, 1902, and 1903, when Paiutes made up about one-half of the population, the defendant did not allocate any of the clothing expenditures to the Paiutes, but improperly charged the total amounts against the plaintiff. The rest of the expenditures claimed for offsets for clothing are improper because they were too small to amount to tribal benefits or the amounts were spent from funds for the relief of needy Indians, not allowable as offsets. For the reasons discussed herein, the claimed offsets for clothing will be disallowed.

Expenditures for Purchase of Improvements

By the Act of March 3, 1885, 23 Stat. 677, entitled "An Act for the relief of certain settlers on the Duck Valley Indian Reservation in Nevada," Congress appropriated $5,400 to pay for the improvements of four persons who had settled and placed improvements on the Duck Valley Reservation lands. These settlers had moved on the land before Duck Valley Reservation was established, had placed certain improvements thereon, but had to leave the land on which they had settled soon after the reservation was created. The settlers had no legal rights in the tracts on which they had placed improvements because, inter alia, the lands were unsurveyed. However, the Department of the Interior concluded that the settlers had an equitable claim for the value of their improvements, and urged passage of legislation providing for their payment. There is conflict as to what improvements (e.g. corrals, log houses, etc) actually remained on reservation lands after the settlers left.

There is no evidence that the improvements were a benefit to the plaintiff Western Shoshones and the defendant's claim of a gratuitous offset for this expenditure is disallowed.

Agricultural Aid:

Clearing, Breaking, Fencing Land

The defendant asserts that $2,978.90 was gratuitiously spent for agricultural aid in clearing, breaking, and fencing land for the Western Shoshone Indians between April 16, 1877, and June 30, 1951. Amounts spent for items listed from 1886 through 1904 were disbursed pursuant to Disbursement Schedule 9 already discussed (See note 8.) Because Paiutes were living on Duck Valley Reservation during those years and there was no separate appropriation for their use during some of those years, amounts charged against the plaintiff should have been reduced from 100% to reflect the proportionate share of benefits which the Paiutes presumably received from the expenditures. Further, in 1903, although only 47% of the expenditures should have been allocated to the Western Shoshones, not 100% as the defendant charged, the amount spent that year was $30.41, indicating that individual Indians may have received benefits from the expenditure but the sum was insufficient to amount to a tribal benefit. There is no evidence that agency costs were deducted from these expenditures.

Amounts spent for each year listed after 1910, with an exception noted hereafter, were all below $40, expenditures which may have

benefited individuals or school or agency lands. The amounts are too small to constitute a tribal benefit and are not proper gratuitous offsets. The amount of $91.80 which the defendant lists as having been spent in 1945 includes an expenditure of $62.37 from funds for the support and rehabilitation of needy Indians. Expenditures from such funds are not proper offsets under the Indian Claims Commission Act.

The defendant's failure to eliminate improper expenditures from amounts paid for clearing, breaking, and fencing land requires the rejection of the offsets claimed for this category of expenditures.

Mills and Shops, Pay of Blacksmiths, Mechanics, Carpenters and Range Specialists.

The defendant asserts offsets for a number of expenditures which are in categories excluded as gratuitous offsets by statute. These expenditures include mills and shops as follows: $1,957.36 for blacksmith shops; $71.87 for machine shops; $51.51 for flour and grist mills; $4.66 for tin shops; $28.77 for carpenters' shops; $8,899.95 for pay of blacksmiths and general mechanics; $298.41 for pay of carpenters; $119.15 for range conservationists; $87.92 for range managers; $44.73 for pay of shoe and harness makers; $33.60 for miller; and $32.85 for pay of herders and stockmen.

Expenditures for the above-listed purposes are primarily agency, administrative, or educational expenses, all of which categories are excluded as gratuitous offsets by statute. Kickapoo Tribe of Kansas v.

United States, Docket 316, 15 Ind. Cl. Comm. 628, 645 (1965); Red Lake, Pembina and White Earth Bands, supra; Kiowa, Comanche & Apache Tribes, supra.

The amounts claimed under these headings as gratuitous offsets will be disallowed.

Household Equipment and Supplies, Hardware, Glass, Oil, and Paint, Fuel and Light.

The defendant asserts gratuitous offsets amounting to $6,518.85 spent for household equipment and supplies between April 1877 and June 30, 1951, $5,462.63 for hardware, glass, oils, and paints over the same period of time, and $1,383.32 spent for fuel and light, also for the same time period. The yearly expenditures for each of the categories were so minimal that it is not reasonable to conclude that any of them amounted to tribal benefits. For example, representative vouchers showing purchases of household equipment and supplies include orders for quite small quantities of brooms, soap, candles, and like items. The 8-inch wooden cook stoves, four or five of which were purchased in each of the years 1888, 1894, 1896, and 1897 and similar supplies were presumably for agency, school, or hospital use, or for the use of administrative employees. In 1899, 12 wooden cooking stoves were purchased and in both 1905 and 1907 10 small (8-inch) cooking stoves were purchased. These may have been for the use of school cooking classes or for other administrative use. Annual reports of the Commissioner of Indian Affairs indicate that some of the Indians who had built

houses may also have received a cook stove. As the number of stoves involved is too few to have constituted a tribal benefit, the offsets claimed for these three categories will be disallowed.

Houses and Indian Dwellings. The defendant claims gratuitous offsets in the amount of $4,234.09 for houses and Indian dwellings, of which amount $3,267.17 was spent in 1942, $958.13 was spent in 1943, and $8.79 in 1936, the amounts in 1942 and 1943 having been spent under Department of the Interior Appropriation Act provisions authorizing appropriations of funds for the support and rehabilitation of needy Indians. Amounts spent from funds for the support and rehabilitation of needy Indians did not represent a tribal benefit, having been used to benefit a few needy individuals. (Kiowa, Comanche, and Apache Tribes, supra.)

Miscellaneous Building Material.

The defendant claims an offset of $309.61 under the heading, "Miscellaneous Building Material." This amount was presumably spent for agency or administrative purposes since it is listed separately from a category of expenses designated "Houses and Indian Dwellings". Kickapoo Tribe of Kansas v. United States, supra. In accordance with the opinion in the cited Kickapoo case, the amount will be disallowed.

Seeds, Fruit Trees, and Fertilizers.

The offsets claimed for seeds, fruit trees, and fertilizers amount in all to $1,249.38 in expenditures between 1885 and 1947. There is no indication that the claimed amounts were not spent for agency and school purposes which expenditures are excluded by statute as a basis

for offsets. For most of the years for which the defendant claims offsets for seeds, fruit trees, and fertilizers, the amounts claimed are so small as to indicate that no more than several individuals could have been benefited and that the claimed expenditures did not amount to tribal benefits. The offsets claimed for this purpose will be disallowed.

Care and Sale of Timber; Care and Protection of Indian Forests and Ranges.

The defendant claims $1,140.43 gratuitously expended for the care and sale of timber for plaintiff. Except for $3.99 spent in 1905, the money was spent from 1941 through 1949. Section 6 of the Indian Reorganization Act (25 U.S.C. §466), enacted in 1934, granted the Secretary of the Interior broad authority to restrict grazing on Indian range lands and to protect the range and also to regulate the operation and management of Indian forestry units which includes authority to care for and protect Indian forest lands. Section 2 of the Indian Claims Commission Act (25 U.S.C. §70a) prohibits allowance as gratuitous offsets of expenditures under any of the provisions except section 5 of the Indian Reorganization Act. These statutory provisions preclude allowance as gratuitous offsets for the amounts claimed for care and sale of timber.

The Secretary of the Interior is authorized under 25 U.S.C. §413 to collect reasonable fees to cover the cost of work performed for Indian tribes. This apparently has been interpreted to include a percentage of the proceeds of Indian timber fees as an administrative fee.

Under this provision, the defendant presumably already has been paid for administrative expenses incurred in the care and sale of timber. The defendant has not shown that the expenses for the care and sale of timber are allowable gratuitous offsets under the Indian Claims Commission Act. Accordingly, the claim will be disallowed.

The defendant's claim for gratuitous offsets of $68.79 spent in 1940 and 1951 for the care and protection of Indian forests and ranges will be disallowed on the same basis as the claim for care and sale of timber.

Purchase of Livestock. The defendant's claim for an offset for the purchase of livestock amounting to $183.50 in 1943 will be disallowed, the expenditure having been made from funds for the support and rehabilitation of needy Indians. (Kiowa, Comanche and Apache Tribe of Indians v. United States, supra.)

Feed and Care of Livestock. Amounts claimed as gratuitous offsets for the feed and care of livestock for the years 1878 through 1940 totaled $983.39. Vouchers in support of the amounts claimed showed that the Indians and others were paid for supplies of grain and hay for feeding and caring for agency and school livestock.

According to the 1892 Report of the Commissioner of Indian Affairs, the Western Shoshone school owned 2 work horses, 1 bull, 5 cows, 3 yearlings, and 3 suckling calves, in all 14 head of livestock belonging to the school. In 1879, the school had 21 head of cattle and 3 horses.

Expenditures for feeding and caring for agency and school livestock are not proper offsets and the amount claimed for this purpose will be disallowed.

Hunting and Fishing Equipment. The defendant claims gratuitous offsets of $208.32 for hunting and fishing equipment for the plaintiff. The amount for the second year for which expenditures are claimed should indicate an allocation of 72% rather than 100% of the charges against the plaintiff to reflect the proportion of plaintiff's members to others on the reservation at the time. As adjusted, the sums spent in 1885 ($31.50) and 1887 ($25.77) and the $3.27 listed for 1911 are too small to have been tribal benefits.

The only voucher supporting the remaining expenditures for hunting and fishing shows an expenditure of $80 for 20 dozen squirrel traps to save the grain supply in 1887. The agency and school grain was grown on a 250-acre reservation tract which also supplied flour and grain for the Indians when the crop was sufficient. Very few Indians tried to grow grain because of a shortage of cultivable land and irrigation water. The agency and school benefits are not shown to have been deducted from this expenditure. Offsets for this category will be disallowed.

Planting and Harvesting Crops. During the period from May 4, 1886, to June 30, 1941, the defendant asserts that $31.58 was gratuitously expended for agricultural aid in planting and harvesting crops for the plaintiff. The amount, which may have been an administrative expense

or may have benefited individual Indians, is not large enough to warrant designation as a tribal benefit and will be disallowed.

Recovery of Strayed or Stolen Livestock. The defendant asserts that $17.69 was gratuitously spent for the recovery of strayed or stolen livestock for the plaintiff. The amount may have been an individual benefit or an administrative expense as the livestock may have belonged to the school or agency herds. The amount will be disallowed as a gratuitous offset.

Pay of Tribal Councilmen. The defendant claims an offset of $64.40 representing plaintiff's share of a $92.00 expenditure in 1936 for pay of tribal councilmen to which the plaintiff objects on the ground that the defendant has not shown that the council was acting on its own initiative on tribal business. The claim will be disallowed.

We turn now to the effect of the Act of October 27, 1974, Pub. L. No. 93-494, section 2 of which amended section 2 of the Indian Claims Commission Act (25 U.S.C. §70a. (1970)) by providing that expenditures for food, rations, or provisions shall not be deemed payments on the claim. Up to the time of its enactment, treaty consideration paid by the United States, including the total of expenditures for food and subsistence needs which were often supplied by the United States in lieu of money consideration promised by treaty, was required, under section 2 of the Indian Claims Commission Act, to be deducted as a mandatory offset from an award found by the Commission to be due to the plaintiffs. Since the enactment of Pub. L. No. 93-494, however, expenditures for food, rations, or

provisions may not be deducted as payments on the claim from an award to the plaintiff. Both parties filed supplementary pleadings in support of their positions on the effect of Pub. L. No. 93-494 in this proceeding.

The Commission has recently considered the application of the 1974 amendment in determining the amount of treaty consideration for which the defendant may be credited as a payment on the claim in Prairie Band of the Pottawatomie Tribe v. United States, 38 Ind. Cl. Comm. 128, 224-28 (1976). Expenditures for food, clothing, medicine, tents, agricultural implements and equipment, transportation furnishing such goods, and similar items relating to supplying basic subsistence needs, were considered to be food, rations, and provisions within the meaning of the 1974 amendment.

Under Article VII of the Treaty of Ruby Valley of October 1, 1863 (18 Stat. 689), the United States agreed to

> . . . pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. . . .

The agreement was prefaced by a statement to the effect that the United States was aware of the difficulties to the Indians resulting from the driving away and destruction of game in areas used and settled by white men. The amount which the United States agreed to pay under Article VII of the treaty was compensation for the loss of game and the loss of

rights and privileges in plaintiff's lands granted by the treaty. The articles to be furnished to the Shoshones under Article VII were to be suitable to their needs as hunters or herdsmen and were intended to mitigate the interference by miners and settlers with the Indians' ways of livelihood. Supplies and provisions relating to the subsistence needs of the Indians, such as food, clothing, farming supplies and equipment, and hunting and fishing equipment, in addition to livestock, were intended to be furnished under Article VII as indicated by the express provision specifying that the articles to be supplied were to be suitable to the wants and condition of the Indians, either as hunters or herdsmen. Services in transporting and making available the supplies agreed to under Article VII, being a necessary part of satisfying the Article VII treaty obligation, are likewise considered to be food, rations, and provisions within the meaning of Pub. Law No. 93-494.

We have examined the defendant's exhibit O-1 in the offsets proceeding, the General Services Administration Report in Docket 326, 326-A, and 326-K, an accounting report compiled from the records of the General Accounting Office, the Bureau of Indian Affairs, and the Department of the Interior, which includes an accounting of expenditures of the United States in fulfilling the Treaty of Ruby Valley. Two disbursement schedules in the report list disbursements designating the items for which the amounts listed were spent in fulfilling the Treaty of Ruby Valley. However, the first of these schedules, totaling $25,728.67,

consists of amounts disbursed for the Northwestern Bands of Shoshones under the Treaty of Box Elder of July 30, 1863, and for the Goship Shoshones under the Treaty of Tuilla Valley of October 12, 1863, in addition to amounts spent for the Western Shoshone Bands under the Treaty of Ruby Valley of October 1, 1863. Amounts spent under the latter treaty are not separated from amounts spent under the two former treaties in this schedule, and the information is so presented that amounts spent for the Western Shoshone cannot be separated out from those spent for the others included in the schedule. Accordingly, Disbursement Schedule No. 1 in the accounting report for this docket will not be used as a basis for deducting any amount as payment on the claim from the award in subject proceeding.

Disbursement Schedule No. 2 listing expenditures which total $83,607.24 consists exclusively of amounts spent in fulfilling the Treaty of Ruby Valley.

A copy of this schedule is included in our findings herein. The purchases shown on the schedule, with the exception of certain individual services, are similar to or identical with the goods and services which the Commission, in the Pottawatomie case, supra, considered were food, rations, and provisions under the 1974 amendment. The ordinary meaning of the phrase, "food, rations, and provisions" does not include individual services. In Pottawatomie, supra, we held that services (e.g. transportation and storage) in supplying and making available food, rations, and provisions, being a necessary part of furnishing the items, were within

the purview of the 1974 amendment. In subject case, treaty funds were expended by the defendant for several types of individual services in addition to transportation and storage of food, rations, and provisions, including services of a physician, farmer, and interpreter for the Western Shoshones. We conclude that the services of a physician, interpreter, farmer, and others listed below, although closely related to plaintiff's subsistence needs at the time of treaty payments, are not food, rations, or provisions within the meaning of the 1974 amendment. Accordingly, the amounts listed below, shown in Disbursement Schedule No. 2 as having been spent for such services, will be allowed as payments on the claim:

Pay of farm laborers	355.75
" " physician	1,330.72
Paid for blacksmithing	5.50
Pay of clerk	783.61
" " farmer	6,677.13
" " inspector	12.40
" " interpreter and manager	245.00
Total	$9,410.11

This amount will be deducted from the award as a payment on the claim by the defendant.

The remaining $74,197.13 listed in Disbursement Schedule No. 2 represents amounts paid for food, rations, and provisions within the meaning of the 1974 amendment, and so may not be deducted as payment on the claim in this proceeding. See Pottawatomie, supra, 38 Ind. Cl. Comm. 224-28.

Subject to qualifications not here relevant, the parties agreed in their proposed findings and briefs filed before the enactment of the 1974 amendment of section 2 of the Indian Claims Commission Act that the United States had paid $96,763.18 treaty consideration, to be deducted as payment on the claim from the award in this proceeding. This amount is shown in the accounting report as having been expended by the United States in fulfilling the Treaty with Shoshones, Western Bands. Of the total expended, we have just concluded that $74,197.13 may not be deducted from the award herein by reason of the 1974 amendment of section 2 of the Indian Claims Commission Act precluding deductions for expenditures for food, rations, or provisions as payments on the claim. There remains a balance unaccounted for of $13,155.94 which the accounting report shows was appropriated to fulfill the treaty with the Western Shoshones. There is no way of determining whether the $13,155.94 was spent for the benefit of the plaintiff.[12/] Consequently, it will not be deducted as a payment on the claim involved in this proceeding. We conclude that $9,410.11 may be deducted from the award in this case as payment on the claim.[13/]

Conclusion

For the reasons discussed above, and in accordance with the findings herein, we conclude that no gratuitous offsets are allowable. The outcome

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12/ The amount was unaccounted for by John How, Indian Agent. Suit was brought against How to recover $79,000 which included the $13,155.94. The suit resulted in a compromise settlement. $2,000 paid by Mr. How's sureties was credited to the appropriation "Fulfilling Treaty with Shoshones," but the accounting report indicates that there is no way of establishing whether any of that amount was disbursed to fulfill the 1863 treaty obligation. The amount is claimed by the plaintiff in Docket 326-A.

13/ Our conclusion with respect to amounts paid under the Treaty of Ruby Valley is without prejudice to the claim for treaty funds in the accounting case, Docket 326-A.

is not unfair in this case. For much of the time under consideration, approximately 60 sick, old, and indigent Indians, about one-half of whom were presumably Shoshones received some rations from the defendant. However, many of the reports of Commissioners of Indian Affairs stated, in effect, that the Duck Valley Reservation Indians virtually supported themselves except in years when grasshoppers, ground squirrels, or drought devastated the area.

In our interlocutory order of October 11, 1972, 29 Ind. Cl. Comm. 5, 124, we concluded that the plaintiff was entitled to recover $21,560,000.00 for the fair market value of its California and Nevada lands and to recover $4,604,600.00 for profits lost from ores mined from its Nevada lands before July 1, 1872, the latter amount being subject to deductions for payments made by the defendant under the Treaty of Ruby Valley. We concluded herein that under the Act of October 27, 1974, Pub. L. 93-494, amending section 2 of the Indian Claims Commission Act, $9,410.11 is to be deducted for payments made by the defendant under the Treaty of Ruby Valley. Accordingly, we allow a net award in the amount of $26,145,189.89.

Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner