

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

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings of fact numbered 1 through 68 previously entered herein.

69. Agreement on Acreage. Prior to the valuation hearing held from September 12 through 21, 1967, in this case, the Bureau of Land Management prepared a map introduced as Joint Exhibit 1 which showed certain lands purchased and small reservations set aside for the Western Shoshones within the area of the subject claim.

At the trial the following discussion about acreage took place:

COMMISSIONER HOLT: Do you also agree on the acreage?

MR. BARKER: Yes, Your Honor. The acreage has been stipulated and agreed to. The acreage as shown on Joint Exhibit No. 1 is 24,420,000 acres of land.

COMMISSIONER HOLT: Is that correct, Mr. Sullivan?

MR. SULLIVAN: That is right, Your Honor.

COMMISSIONER HOLT: All right.

MR. BARKER: In addition to this, there are certain areas shown on Joint Exhibit No. 1 in dark ink. These are either executive orders or other reservations or purchases that were made for the Indians, and these are enumerated on this map by acreage: For example, Battle Mountain Indian Reservation, 680 acres; Elko Colony, 160 acres; the South Fork purchase, 1,339.42 acres; Ruby Valley Indian Reservation, 1,240 acres; Duckwater, 3,785.43 acres; and the Yomba, Y-o-m-b-a, Indian Reservation, 4,681.4 acres.

COMMISSIONER HOLT: Out of the 24,420,000 figure?

MR. BARKER: That is correct, Your Honor.

The parties have agreed that this would be excluded from the area to be valued, and not be treated later separately as an offset, but would be excluded, and that leaves us a net area to be valued of 24,396,404 acres, and I notice that the Government's report uses this same acreage, and I think we can stipulate to that.

Is that right, Mr. Sullivan?

MR. SULLIVAN: That is correct.

COMMISSIONER HOLT: All right. That will be the acreage. (Emphasis added.)

This discussion is the basis of the agreement by the parties that the reservations and land purchases shown on Joint Exhibit 1 - amounting to 23,596.43 acres - would be excluded from the area to be valued and not be treated later separately as an offset, according to the plaintiff.

70. Treaty of Ruby Valley: Provisions on Reservations

The Treaty of Ruby Valley of October 1, 1863, 18 Stat. 689, under which the plaintiff granted the defendant rights and privileges in the

Western Shoshone lands, defined in Article V, the boundaries of the country claimed and occupied by the plaintiff. Article VI of the treaty provided:

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

During the period from 1863 to 1877 no permanent reservation was established for the Western Shoshones who continued to live and subsist in their aboriginal territory, although one reservation and several small settlements were started. The Indians were forced by the encroachment of white settlers to leave the cultivable portions of their aboriginal lands, and to work as laborers for the settlers. Some Shoshones reportedly rented their former lands from settlers who claimed them.

71. Plaintiff's Use of Aboriginal Lands, 1870-1877. Reports of Indian agents in Nevada and other representatives of the Commissioner of Indian Affairs provide a chronological account of the attempts to establish a reservation or reservations for the Western Shoshones between 1870 and 1877.

The Annual Report of the Secretary of the Interior for 1870 stated that about 500 or 600 Shoshones near Austin, Nevada, whose ancestral

lands were described in Article V of the Treaty of Ruby Valley had no reservation, that only a few of them cultivated any land, and those were liable to have their claims "jumped" at any time. These Indians wanted a reservation but were concerned lest they be removed too far from their own country. The report recommended that Mr. Levi A. Gheen, a farmer working with the Shoshones, be instructed to explore for a suitable place within the limits designated in the Treaty of Ruby Valley as "their country". The report stated that the number of these Indians did not fall far short of 5,000. Some were doing well working for settlers, others were destitute. About \$900 from the treaty stipulation fund was spent for cheap blankets and shirts to be issued by Mr. Gheen to the destitute.

Two special commissioners, John Wesley Powell and G. W. Ingalls, reported in 1873 to the Commissioner of Indian Affairs on the condition of Indians in Utah, Nevada, and Southern Idaho, who had not yet been collected on reservations. According to the commissioners' report there were not sufficient lands and waters for reservations in 1873 within the boundaries of the aboriginal lands of most of the Indians involved because such lands and waters had been taken by settlers. The commissioners suggested that the Western Shoshones be removed to Fort Hall, but observed that some of them had not consented to moving there as they wanted a reservation within their own country.

Powell and Ingalls reported also that the Western Shoshones were divided into small tribes and fully understood that the settlement of

the country by white men was inevitable.^{1/} The Western Shoshones asked that they might have lands of their own and be assisted to become farmers and stock raisers, but especially they asked to have cattle. Powell and Ingalls reported further that each small tribe wanted a reservation within the limits of its own territory but this was regarded as impracticable, as the cost of protecting the Indians' rights would be great.^{2/}

On June 25, 1873, the Commissioner of Indian Affairs, with the approval of the Department of the Interior, accepted the recommendations made in the Powell and Ingalls report and authorized Powell to carry them into effect. The provision affecting the Western Shoshones directed that two or three reliable men be employed by the commission to collect

^{1/} Pls. Ex. OCS-82 from *Anthropology of the Numa*, ed. Don D. and Catherine S. Fowler (Smithsonian Institution Press, 1971.)

^{2/} After examining the possibility of setting apart new reservations for these Indians, Powell and Ingalls observed 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. *Id.* at 99.

The report described the Western Shoshones from the southern parts of their aboriginal lands as being in an exceedingly demoralized state, prowling about the mining camps begging and pilfering, and concluded that there were no Indians in all the territory visited by the Commission whose removal was so imperatively demanded by considerations of justice and humanity as these Shoshones of Nevada.

the Western Shoshones at three or more points where they could be visited by the commission and their annuities distributed to them, and that they be informed of the decision of the Department that they must go on reservations, and thereafter no annuities would be distributed to them except at the reservation assigned to them.

In 1875, the United States Indian Agent for Nevada at Pyramid Lake wrote to the Commissioner of Indian Affairs that during the autumn of 1874 he was visited occasionally, and then more frequently, by Western Shoshones from the eastern part of the state who asked that the agent locate them on a reservation for their permanent homes, and asked also for agricultural supplies. The Nevada agent appointed a farmer, Levi A. Gheen, who was in charge of Western Shoshones at Hamilton, Nevada, to help other Western Shoshones find suitable lands. Gheen assisted in finding an unoccupied fertile valley near Carlin where many Shoshones had settled and were successful in farming.

Gheen reported to the Commissioner in 1875 that quite a number of Shoshones were engaged in farming for themselves and a great many supported themselves by working for settlers. Some who were farming were compelled to rent land from whites, nearly all the tillable land having been claimed by the settlers. The report remarked that the Western Shoshones were scattered over a large tract of country and that more of the Indians would farm if they had land. The report continued with a recommendation that a suitable reservation be set apart for the Shoshones as soon as practicable, stating that settlers

were rapidly taking the country, often forcing the Indians to give up their farms, that the game was being driven out, that in a short time there would be no suitable place for a reservation and the Indians would have nothing to live on.

Gheen reported to the Commissioner in 1876 that about 4,000 generally destitute Western Shoshones were living in Lander, Nye, White Pine, Eureka, Elko, and parts of Lincoln and Humboldt counties. Lands which they previously cultivated and their irrigation water had been taken from them. The Indians asked that if a large enough tract on which all of them could live could not be found, then three or four places should be located as close together as possible and as near to game or fish as possible.

In response to requests for reservation lands, Carlin Farms was recommended by Gheen for the use of the Western Shoshones. The area had been used by the Western Shoshones for a number of years as a small settlement before it was reserved by Executive Order of May 10, 1877, for the Northwestern Shoshones, without mentioning that the Western Shoshones had an interest in the lands. Both the United States Indian agent and Gheen stated that the tract, which was situated in the north central portion of the Western Shoshones' aboriginal use area, was selected for the use of the Western Shoshones. The agent later reported to the Commissioner that the Western Shoshones were using and developing the land and that the results were as fine as any in the area. Correspondence from officials in the field which is here

in evidence does not mention any use of or interest in Carlin Farms by the Northwestern Shoshones.

At the time Carlin Farms was reserved for the Indians, the United States requested that the Western Shoshones living in the Ruby Valley area move to Carlin Farms. Apparently, several hundred head of cattle were furnished by the United States in partial fulfillment of its treaty obligation to the Western Shoshones in Ruby Valley. According to Indian witnesses, after a number of years, this livestock (except for 25 head) was taken from the Ruby Valley Western Shoshones and moved to Carlin. The Ruby Valley Western Shoshones were told that they could have their livestock if they moved to Carlin. An Indian agent reportedly told Chief Temoak, leader of the Western Shoshones 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 county, I go too. Have my ground here, I can't move." Western Shoshones from Temoak's band were often mentioned by agents for the defendant as among plaintiff's members who did not want to move from their lands to a distant reservation.

In 1877, Gheen, accompanied by a number of Shoshones, examined the Duck Valley country, aboriginal area of some of the Western Shoshone bands, north of the Ruby Valley and Carlin areas. Gheen found Duck Valley suitable for a reservation for the Shoshones, reported this to the Commissioner of Indian Affairs, and requested that the area be reserved

for the use and occupancy of the Western Shoshones, describing it as the only tract of land unclaimed in Nevada suitable for a reservation for them.

72. Establishment of Duck Valley Reservation. By Executive Order of April 16, 1877, the President set apart the Duck Valley Reservation in Nevada and Idaho for the Western Shoshone Indians. The land is shown as Royce Area 604 in Nevada and Idaho. (Eighteenth Annual Report of the Bureau of American Ethnology, Part 2, Indian Land Cessions in the United States.) Thereafter, by Executive Order of May 4, 1886, the President added land to the northern boundary of Duck Valley Reservation in Idaho, as follows: T. 15 S., Rs. 1, 2, and 3 E. of the Boise meridian, except such tract or tracts of land within said townships, the title to which had passed out of the United States, or to which valid homestead or preemption rights had attached prior to the date of the order. The land so added to Duck Valley Reservation is shown as Royce Area 660 in Idaho (Id.). The land was added to the reservation for Paddy Cap's band of Paiutes and other Indians the President might settle thereon. The area of the reservation after the above-described Idaho land was added to it in 1886 was 312,320 acres.

According to Gheen, approximately 368 Shoshones from eastern Nevada accepted the reservation at once. Gheen wrote to the Commissioner that it would take several years to congregate all the Western Shoshones on the reservation, and that a few of the old Indians strongly opposed

moving. Gheen recommended that the Indians who were farming in different parts of the State and wished to remain on their ranches for another year be allowed to do so. It was his opinion that more Indians could be gathered than cared for at Duck Valley with the means then available.

The 1878 report for the Western Shoshone agency to the Commissioner of Indian Affairs observed that some of the Western Shoshones were migratory and that others, most of whom lived south of the Central Pacific Railroad (south of the Elko-Carlin area), lived permanently on little farms or ranches which they cultivated, except at some seasons of the year they hunted and gathered pine-nuts. According to the report, nearly all of the land so cultivated belonged to white people. In some cases, the Indians paid for rent of the land in labor, in other cases, their white friends charged them nothing. Land and water used by the Indians in the area were likely to be taken any time. The Indians were concerned about having a suitable reservation established.

Gheen mentioned in his 1878 report to the Commissioner a council which was held with chiefs and leading Western Shoshones from the area south of Carlin and Elko. Among the chiefs was Timoke (Temoak) who until recently had been recognized as chief of all the Western Shoshones. Temoak stated that he would probably remain in Ruby Valley for the rest of his life but he was anxious that something be done for his people. He recalled that years ago the Shoshones were promised a reservation in Ruby Valley, but the land had since been sold to the whites and nothing

more was said about a reservation.^{3/} All the valuable land, water, and timber had gone to the whites and the game had disappeared. Temoak reportedly remarked that while many of his Indians were employed by whites and had learned farming very well, they lacked land and water necessary for making a living. He strongly recommended that, as the Duck Valley Reservation was the only land unclaimed in the State which was fit for the purpose, every possible means be used to make it attractive to the Indians, that in time all might be induced to go there. According to the report, over 1,000 Shoshones were employed in farming for themselves on lands south of the Carlin-Elko area. Gheen favored the use of inducements to bring to the reservation the Shoshones not yet living there. In this connection, he recommended that confining the delivery of supplies and annuity goods to the reservation would be useful in accomplishing the purpose.

In November 1878, the Commissioner of Indian Affairs directed the Western Shoshone Indian Agent to take charge of the Indians at Carlin Farms and the other Shoshones in Nevada. The agent visited various groups of Shoshones at Tuscarora, Carlin, Elko, and other places. He told them that the purpose of the Government was to give them a home at Duck Valley where they would be supplied with farming utensils, given assistance in farming, and receive other benefits. Late in the spring of 1879, many Shoshones from the Carlin Farms area and Elko arrived at the Duck Valley

^{3/} A reservation had been established for the Western Shoshones in 1859 at Ruby Valley but after a few years of occupancy, it was abandoned according to Royce's Schedule of Indian Land Cessions in Indian Land Cessions in the United States, Part 2, 18th Annual Report of the Bureau of Ethnology (1899), at 829.

Reservation to settle there, resulting in more than 1,000 of them being on the reservation. Later in the year, the agent reported that about one-third of the Western Shoshones were on the reserve, leaving the others in the valleys south of the railroad and in the mining towns. Many of the latter wanted to join the reservation in the autumn of 1879, but the agent reported to the Commissioner that he discouraged their coming until the following spring when they could assist with producing their food.

In 1880, the Indian agent for the Western Shoshones reported that in February of that year 103 Indians moved to the reservation from Paradise Valley (an area northwest of plaintiff's land used by Paiutes), and planned to stay permanently. The report stated: "I have now about 2,500 Indians who look upon the reservation as their home" . . . and added that some 500 more on the outside came to the reservation for assistance in case of need. Nearly 4,000 Indians were reported as belonging to the agency, but of these, at least 1,000 worked on the valley farms of Nevada. Some had small farms on government land, and others worked as laborers for the inhabitants of the towns. There was a steady demand for Indian labor, and settlers often requested the Indian agent to permit Western Shoshones to remain off the reservation and in the areas taken by the settlers. The Indian agent recommended that this course be adopted in Nevada. He reported that in Carlin and several of the valley schools, Indian and white children were attending school together. (The Executive Order reserving Carlin Farms for Indian use was canceled by Executive Order of January 16, 1879.)

The 1881 report of the Western Shoshone Indian agent to the Commissioner of Indian Affairs observed that ranchers and many miners sought the labor of Western Shoshones in preference to that of others. The agent reported that he had assisted four settlements with plows in the following valleys: Clover, Lamoille, Cherry, and Mineral. There were about 50 Indians at each of these settlements and they had done well.^{4/} Their children attended the district schools with the whites.

A significant number of Indians other than Western Shoshones, including Paiutes and Northwestern Shoshones, lived on the Duck Valley Reservation from 1880 and thereafter. (See 1872 Report of the Commissioner of Indian Affairs remarking that Northwestern Shoshones and Goshutes then living in eastern Nevada were called Nevada Shoshones.) Many Western Shoshones did not move to the reservation but remained scattered among the towns, mining camps, and valleys of northeastern and central Nevada, working during the summer. Some few were farming on their own account. After the establishment of the Duck Valley Reservation, the United States did not continue to search for reservation lands for the Western Shoshones.

73. Western Shoshone Aboriginal Area. The locations of the boundaries of the Western Shoshone country, described by metes and bounds

^{4/} The only way of protecting Indian use of these lands which was mentioned in the reports to the Commissioner of Indian Affairs was by helping the Indians to make entries or to make entries for them under the public land laws. Homestead entries could be made by Indians who abandoned their tribal relationships (see Act of March 3, 1874, 18 Stat. 420).

in Article V of the Treaty of Ruby Valley, are not free from doubt.^{5/} The decision in the valuation proceeding herein noted that the territorial claim of the Western Shoshones, as described in the Treaty of Ruby Valley and depicted by Royce, Indian Land Cessions in the United States, supra, was larger than the area of the claim in Docket 326-K (29 Ind. Cl. Comm. 5, 47, note 5). The Western Shoshone lands are shown as Area 444 on Royce's maps of Nevada, California, Utah, Oregon, and Idaho. Royce Area 444 extends far north into Idaho, northwest into Oregon, east into Utah, and covers more Nevada land than is included in the Docket 326-K claim. According to Royce's maps and cession schedules, the Lemhi reserve, established by Executive Order of February 12, 1875 (for the Shoshoni, Bannocks, and Sheepaters), the Carlin Farms reserve, established by Executive Order of May 10, 1877, and the Duck Valley reserve, established by Executive Order of April 16, 1877, were all located within the boundaries of the Western Shoshone country as described in the Treaty of Ruby Valley.

Leaders of the Western Shoshones who lived near the area of the Duck Valley Reservation suggested that the Duck Valley land be set aside for all Western Shoshones, but the Temoak bands, who lived in the

^{5/} In Indian Land Cessions in the United States, Part 2, 18th Annual Report of the Bureau of Ethnology (1899), Royce states in the notes on the Treaty of Ruby Valley in the Schedule of Indian Land Cessions, that the Bannocks were more or less intimately associated with the Western Shoshone bands. The reports of their respective boundaries contained much confusion and contradiction. Probably both tribes freely used a vast territory. However, in Nevada, the Bannocks were seldom found south of 41° N. latitude. This suggests that the Bannocks rarely used lands south of the Elko-Carlin Farms area.

Ruby Valley area south of Duck Valley objected because the reservation was not within their country. The Temoak bands believed that the treaty promised them a reservation in Ruby Valley. This disagreement is consistent with the observations of Powell and Ingalls who reported in 1873 that each local group wanted a separate reservation in its particular aboriginal area.

Royce relied on data and information of the Bureau of Indian Affairs and the General Land Office in preparing his material. (Royce, supra, p. 644.)

The Royce maps, in an official publication of the United States (as is the 18th Annual Report of the Bureau of American Ethnology), show the Duck Valley Reservation as being within the lands described in Article V of the Treaty of Ruby Valley and within the aboriginal area of the Western Shoshones. These maps and the notes in the Land Cession Schedules (see note 5, infra) indicate that officers of the United States believed in 1877 when the reservation was established that it was within the Western Shoshone aboriginal area. However, plaintiff's exhibit 72 in the offsets proceeding includes a report accompanying a letter of July 11, 1941, of the Department of the Interior to the Chairman of the Committee on Indian Affairs of the House of Representatives which states that according to maps available to the Department in 1941, the country of the Western Shoshones, as described in the Treaty of Ruby Valley, was much less extensive than that shown as Area 444 on the Royce maps, and that according to the then

recently discovered maps, the Duck Valley Reservation was outside of the Western Shoshone aboriginal lands. In 1935, before the discovery of the maps referred to in the 1941 report, the Department of the Interior reported to Congress that the reservation was within the Western Shoshone aboriginal area.

In sum, from about 1869 through 1877, the United States assisted some Western Shoshones in maintaining small farms and one or more reservations within the aboriginal area, and in 1877, set aside the Duck Valley Reservation for all Western Shoshones. Between 1877 and 1941, Department of the Interior records indicated that the reservation was within the plaintiff's aboriginal area, but since 1941 the matter has been open to doubt.

74. Conditions Leading to Purchase of Private Tracts and Ranches.

Plaintiff's witnesses at the hearing on offsets on October 9, 1973, included an anthropologist, Dr. Omer Stewart, who specialized in the study of 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 late 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 somewhat improved conditions.

In the late 1930's 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.

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 Carson agency report which discussed a project to purchase a number of the tracts here claimed for offsets, some of which 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 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 emphasized 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 some of the tracts 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.

75. Yomba Reservation. A number of the tracts purchased which are claimed as gratuitous offsets here are designated the Reese River project by the defendant. These are the Bowler, Doyle, and Bolster ranch and the Worthington ranch consisting of Collins and Dieringer tracts and the Easton and Hiskey tracts. These tracts make up the Yomba Reservation in Nye County. The Yomba Reservation was 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. (See note 5, opinion.) Designated individuals may have use interests in the assigned lands, but the United States holds legal title to the land for the Yomba Tribe, i.e., for all of the Indians entitled to live on the reservation.

76. Odgers 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, now known as the Temoak Band of Shoshones, 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 on relief. The purchase of the Odgers ranch was intended to benefit some of the Ruby Valley colony.

The Odgers ranch, containing 1,987.04 acres, situated 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, 988). 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.

77. South Fork or Temoak Reservation. The South Fork or Temoak Reservation consists of a number of tracts which are claimed here as a gratuitous offset. These are identified in the defendant's exhibit 0-2 vouchers as follows: The Drown tract, voucher 1280782; the Ogilvie tract, voucher 100068; the Henderson tract, voucher 1256141, and the DeWar tract, voucher 1242302. The reservation was established in 1941 under section 7 of the Indian Reorganization Act. The Drown tract, containing approximately 2,193.63 acres, was purchased in trust for ". . . such Indians of the Temoak Bands of Western Shoshones resident in Nevada as shall be designated by the Secretary of the Interior." Vouchers for the other tracts on this reservation state that the tracts were for the benefit of the Temoak Bands. The reservation now contains about 13,000 acres made up of four or five single family ranches bought for Shoshones and Paiutes . When the earliest 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. At the time of the establishment of the reservation in 1941, the South Fork Tribe to whom the beneficial interest in the reservation land belongs, consisted of the persons selected to live on the tracts by representatives of the Bureau of Indian Affairs.

78. Jarvis Tract. 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 preemption 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. The record contains no evidence that the plaintiff benefited from the purchase of the Jarvis tract.

79. Acreeage Needed for Stock Raising Operations. A number of reports of Indian agents to the Commissioner of Indian Affairs discussed Duck Valley Reservation lands and their capability of supporting the Indians living there. Raising livestock was the only feasible way for the Indians to make a living from the reservation lands situated in an area of dry climate, short growing season, and short water supply. The lands required irrigation for the cultivation of crops. The Shoshones were known as capable livestock operators. Although some agents recommended allotting the reservation lands, this was not done, in part, apparently, because of the nature and quantity of land needed to support livestock operations in Idaho and Nevada. A report to the Commissioner from an agent who inspected Duck Valley Reservation in 1921 stated that

judging from the amount of land used by neighboring ranchers, each allottee would need about 200 acres of irrigated land and several thousand acres of grazing land. This would have been impossible, there being only 321,000 acres in the reservation, much of which was unusable, and 671 Indians to share it. The agent recommended that each Indian should be allotted 40 acres of irrigable land and 440 acres of grazing land. However, the reservation never had sufficient irrigable acreage to carry out such a plan. One agent estimated that only 1,500 to 3,500 acres of the reservation were cultivable and that 200,000 acres of the reservation were unfit for any agricultural or grazing use. None of the neighboring ranches had less than 200 acres of irrigable land and thousands of acres of grazing land, and two nearby ranches had between 800 and 1,000 acres of irrigated land.

Large quantities of land are necessary to support successful livestock operations in the part of Nevada here under consideration. Private ranches within the area of plaintiff's aboriginal use contain thousands of acres of land. (Western Shoshone Identifiable Group v. United States, supra, at 65-71.) The total 18,485 acres in the relatively small ranches for which offsets are here claimed were not, when purchased, capable of supporting a significant proportion of plaintiff's members according to population data for the years 1940 and 1950. The tracts are held in trust for newly created reservation tribes consisting of the

individuals selected to live thereon. Some of the selected individuals were not members of plaintiff's tribe. The claim for offsets for these tracts, referred to in findings 75 through 78, amounting to \$266,131.00, will be disallowed.

79 (a). At the hearing on offsets, the parties agreed that their maps and exhibits showing the location of the purchased tracts, for which the defendant claims offsets, in relation to the plaintiff's aboriginal land area as defined in the title decision in this case (11 Ind. Cl. Comm. 413-14), were substantially the same. These exhibits indicate that three of the tracts for which the defendant claims offsets are outside of plaintiff's aboriginal land area. These are: the Jarvis tract in Idaho (see finding 78), and two separate 40-acre parcels which were purchased as part of the 2,161.48-acre Bolster-Doyle ranch, now part of the Yomba Reservation. The two last-mentioned parcels are described as SE⁴ NW⁴ sec. 21, T. 10 N., R. 38 E., and the SE⁴ NW⁴ sec. 31, T. 12 N., R. 38 E., M.D.B.&M. Eighty acres of land in this area is not considered sufficient to support a family.

80. 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.

The Commission concludes 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. 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 these will be disallowed.

During 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.

80 (a). Indian Labor. 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 1874 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 such labor would be for the benefit of the agency, 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. However, 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 below, 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 a number of years, the work was estimated by the Western Shoshone agents as being worth several thousand dollars annually.

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. The record does not contain clear cut evidence of the extent to which the Western Shoshones continued to perform construction and maintenance work for school, hospital, road, and agency purposes as a condition of receiving provisions after 1904.

In the 1884 report to the Commissioner of Indian Affairs from the Western Shoshone agency, the agent comments on the provisions supplied for Indians performing labor at Duck Valley as follows:

These people are virtually destroying themselves, and the Government of the United States is responsible for the condition of affairs, for the reason that the country has been settled up by the whites and what would go have been placed on reservations where they have been fed. An Indian is less capable of working on half allowance than a white man would be, yet the Government expects him to perform labor on three pounds of flour a week, and two pounds of beef per week, and one pound of bacon, alternating beef and bacon--that is, the week they get beef they don't get bacon; with one-fifth coffee, one-fourth of sugar, and three-fourths of beans per week. No man that lives can work on that small amount per week. The result of this semi-starvation is fast destroying these people on the reservations. If they were properly fed they would soon be civilized, for they then would abandon the chase for sustenance. The two conditions of food, if I may be allowed to use the term, one civilized and one uncivilized, are antagonistic to their physical improvement and health and to the purpose the Government has in view. I only mean those who remain upon the reservation and work and endeavor to learn the arts of industry. It may be said that although the amount above mentioned is not sufficient, yet this quantity, added to the game, wild fruits, and berries that can be procured, would be an abundance. The answer to this kind of important argument is that the game, fish, wild fruits, are about exhausted, the former by the white man and the latter by the numerous herd of cattle and bands of horses who roam over the mountains and plains. But the most cogent reason against this policy of half feeding is that while the Indian is hunting his ranch work is neglected, and he soon acquires a taste for the wild mountain life and the work of civilization and progress in the arts of industry are retarded, if not retrograded. You cannot harmonize these two conditions of life. The result is almost a total failure of the purposes of the Government.

The agent's reference to ranch work in the quoted statement presumably refers to work on the agency farm. Most of the land on the Duck Valley Reservation was not suitable for cultivation. Crops required irrigation. The supply of irrigation water was short and unreliable. In the early years of the reservation, a tract of about 250 acres of cultivable land was used to grow grain for the agency and school livestock, to obtain flour for the agency and school, and, when the crops were large enough, to supply grain and flour to the Indians and their livestock. Indians worked the reservation tract and cared for the school and agency livestock and tribal livestock, in addition to caring for their small individual gardens.

The Indians were also credited under section 3 of the 1875 Act for work in 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 three houses for themselves, and the 1888 report stated that they had built five log cabins and two frame houses for themselves during the year. Data available for one year indicate that the value of unskilled Indian labor was calculated at substantially lower rates than amounts paid to unskilled non-Indian labor.

80 (b). Indian Labor, Duck Valley Reservation. The report of the Western Shoshone agent to the Commissioner of Indian Affairs in 1883 regarding construction on the Duck Valley Reservation stated:

A new adobe addition has been built to the present agent's residence on the west side of the same, being 38 feet long by 18 feet wide and 10 feet high, one story, with a hall running the entire length of the building and 3 1/2 feet wide; also three rooms 12 1/2 by 12 feet. This building has five windows, one front door (main entrance) and seven inner doors. I have also erected a farmer's house, built of adobe, one story high, 14 by 26, containing two rooms, two doors, and two windows. These buildings were necessary for the accommodation of the agent and employees. I have also erected two wooden buildings for the use of the two head chiefs, Captain Sam and Captain George. Notwithstanding the great cost of transportation of lumber, the high price paid for skilled and unskilled labor, the entire cost of these four buildings does not exceed \$2,000, which, considering the facts, is remarkably cheap. All of the unskilled labor was performed by the Indians, at the rate of \$1 per day, they performing their day's labor regular like the white man, from 7 a. m. to 6 p. m., taking one hour at noon. 6/

The Indians of this reservation have been remarkably industrious and cheerful during the past year. They have erected 1 1/4 miles of wire fence (two strands), planting

6/ In the same report, the Western Shoshone agent stated that non-Indian unskilled labor was receiving \$2.50 to \$3.00 per day.

new posts 10 feet apart and 6 feet high, also about 1 1/2 miles of pole fence. In addition to this they have erected three new stables for the use of their cows and ponies. These stables are 30 by 21 feet each. Three new corrals for horses and four cow corrals; also five cellars for their milk and butter in the summer and their vegetables in the winter. They have repaired all of their old irrigating ditches and made crossings over the same. The work of building the above-mentioned stables, corrals, and cellars would seem to be of little moment to those unacquainted with the difficulties to be encountered and the distance to be traveled to procure the necessary timber for that purpose, from the high and rugged neighboring mountains; but when these facts are taken into consideration the work of erecting these farm improvements becomes of considerable importance, and is worthy of recording as a matter of industry on the part of the Indians. They received no help from the Government except a few pounds of nails and a few feet of lumber to make doors, they purchasing out of their own earnings padlocks for their cellars. (Underscoring added.)

The report of the Western Shoshone agent for 1892 states that:

During the winter, under instructions from the Department, I organized the reservation into three road districts, appointing the Indian judges as road supervisors. Owing to the heavy spring storms and exceedingly high water the quantity of work needed to keep the roads in traveling condition was enormous. In district No. 1 (Elko road) two substantial bridges were put across muddy sloughs, a fill made (where the river was cutting around the end of the main bridge) which took over 500 wagon loads of willows, rocks, and earth to complete, so as to save the bridge from washing out. District No. 2 which leads past the agency, was cleared of the loose rock, partially graded, and thoroughly ditched and drained. District No. 3, which lies at the north end of the reservation, was from necessity passed until fall.

All buildings including school buildings were kept in thorough repair through the year, the engine room to the flouring mill was rebuilt, the main building repaired, the machinery overhauled, parts thoroughly painted to prevent rusting. Four houses were erected for and by the Indians, and seven repaired by the carpenter.

In 1893, three hundred days' work was performed on the public highways of the reservation, about 2 days work for each able-bodied man. During the year the Indians also built a two-story frame boarding school building with a capacity for 50 students, a two-story hospital building, a laundry, a woodhouse, and a brick outhouse for use of the school.

In 1894, the Indians put three hundred and twenty days' labor on the public highways across the reservation, and built a reservoir 32 by 35 by 10 feet, with a wall 30 inches thick, built of stone and cement and covered by a shingle roof. The reservoir stored water which was piped to the school, laundry, and physician's quarters (hospital building) during 1894. In addition to the reservoir and pipes, the school barn and corral were constructed in 1894, as was a stone stable with a gabled roof for six horses.

During 1895, the following improvements were constructed:

. . . a frame implement house for storing implements, hard woods, salt, oil, and all wagon materials; a guard-house 12 by 16 feet substantially built, and a large blacksmith and wagon shop combined, built from material from the old implement house, which was torn down, and also, a small quantity of new material. The carpenter shop had been made into two good rooms for the industrial teacher and his family, the water system was extended to the barn and cow yard, a stone wall was constructed, and painting on the school buildings was in progress.

In 1902, the agent explained that the Indians worked in payment for issues of wagons and various supplies, and since the Indians were fully convinced that these were the terms of the issue, they did

the work with very good will for the most part. Expenditures by the United States for supplies to the Indians in payment for work for school, agency, or administrative purposes or for road work constituted expenditures excluded by statute as gratuitous offsets.

80 (c). Freighting. By way of contrast, unlike the Government practice of furnishing provisions in exchange for construction, maintenance work, and other work under the Act of March 3, 1875, the Western Shoshones were paid, as other labor would have been paid, for freighting supplies and equipment from Elko, Nevada, to the reservation.^{7/} To prevent misunderstanding about this aspect of Indian work at the Duck Valley Reservation, the observations of one of the Indian agents about this work are noted below.

The 1890 report of the Western Shoshone agent indicated that the Indians of the Duck Valley Reservation had started hauling the agency freight the previous year under instructions from the Commissioner.

In 1892, the agent reported:

During the year the Indians have hauled 144,739 pounds of freight from Elko to the agency, a distance of 120 miles over a rough mountain road, receiving therefor the sum of \$2,880.88. This money has been a great boon to the Indians, much greater than the dollars and cents it represents. It has forced them away from home and brought them in contact with business men and the busy world in order to earn it. Their credit along the road is first class; so, no matter what happens to them, they are sure of all needed help from white men whether they have money or not. They are also very reliable and careful freighters: The quantity of damaged freight arriving at this agency during three years of Indian

^{7/} The wage rate for Indians may have differed from that for non-Indians.

freighting is so small as not to be worthy of mention. But as all of the wagons (except a few purchased by the Indians) are light farm wagons, the brakes made for a level country, the work of fitting up and keeping them in repair for our mountain roads falls heavy on the agency and the blacksmith. Several of the Indians are becoming quite proficient in the art of horseshoeing. Each trip adds something to their knowledge and efficiency in taking care of stock and wagons.

In 1898, the Indians earned \$3,539.89 in the transportation of Indian supplies. The report stated that the cost of wagon transportation for goods and supplies for the school was from \$1.90 to \$2.25 per 100 pounds.

A number of the Commissioners' reports in evidence contain estimates of the value of some of the 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 Duck Valley 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, the Indians performed 80 days' labor on reservation roads of the Western Shoshone Agency, and in 1904, they completed 50 days' labor on these roads. In 1884, 70 Shoshones who labored in civilized pursuits obtained 75% of their subsistence by government rations; in 1885, 80 Shoshones who performed such labor obtained 45% of their subsistence by government rations. In 1886, 150 to 185 such laborers obtained 50% of their subsistence by government rations, and in 1887, 70 male Shoshones who performed such labor obtained about 75% of their subsistence by the issue of government rations. 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 for provisions and clothing in this case, a fair estimate of the cost of rations issued in exchange for at least the portion of that work which was described in Commissioners' reports.

The defendant did not subtract from the total offsets claimed for provisions (and for agricultural supplies and equipment mentioned below), the value of rations or provisions and equipment furnished in exchange for road and other construction work and for miscellaneous agency and administrative work. As indicated above, the when payments in rations 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.

80 (d). Provisions After 1904. Representative vouchers submitted by the defendant indicate further that after 1904 expenditures for provisions for agency and school purposes may be included in the amounts claimed as offsets herein. It is unclear whether during the years 1904 through 1937 expenditures for provisions for which offsets are claimed

were reduced by amounts spent for school and agency purposes. Comparable amounts for these purposes may be included in any of the annual expenditure for provisions for which offsets are claimed after the establishment of the Duck Valley Reservation in 1877.^{8/}

In support of its claim for offsets for provisions between 1905 and 1938, the defendant submitted three separate vouchers or claim settlements showing that beef was purchased for the agency Indians and for school pupils during the years 1905, 1907, and 1909. The remaining vouchers submitted as representative of expenditures for provisions over the years from 1905 through 1937 are: a voucher for \$85.00 for sugar in 1905, a claim settlement for \$47.20 for coffee in 1911, and a claim settlement for 8,526 pounds of flour in 1913 which was purchased in August 1912. During the years for which vouchers are in evidence, about one-half of the Duck Valley Reservation population was Paiute. As a consequence, approximately one-half of each expenditure was allocable to the plaintiff.

^{8/} 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.

Annual reports of the Commissioner of Indian Affairs indicate that most Indians at Duck Valley did not receive rations as a principal means of livelihood between 1905 and 1937. In 1902, when the Shoshones at Duck Valley numbered 226, rations were supplied to about 33 of the old or disabled residents 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, eight 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 provisions for the disabled, costs which are health costs excluded as gratuitous offsets by statute. (Report of the Commissioner of Indian Affairs, 1911, Table 21.)

In 1912, when the Shoshone population was 299, rations for which labor was performed were issued to 11 adults and three 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. (Report of Commissioner of Indian Affairs, 1912, Table 22.) Rations for the 31 disabled Shoshones were costs for health care which are excepted as gratuities by statute. Rations for the 11 adults and three 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 five minors received rations in payment for labor performed. In addition, 24 Shoshones who were physically or mentally disabled also received rations. (Report of the Commissioner of Indian Affairs, 1913, Table 22.) 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 five 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. 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.

As the defendant did not separate expenditures excluded by statute from the claimed offsets, the amounts claimed for provisions from 1905 through 1937 will be disallowed.

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.

81. 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 with invoices which identify a few of the items of clothing purchased for each of the years 1884 through 1902 except 1892.

In 1886 and 1887 about 115 destitute Paiutes who had been moved to the Duck Valley Reservation presumably received rations there including blankets and tepee cloth, although a separate appropriation for them had not been made by Congress. The defendant did not deduct from the offsets claimed for those years an amount allocable to the Paiutes at Duck Valley, and did not deduct from the amounts claimed in 1901, 1902, and 1903 expenditures allocable to the Paiutes who made up about one-half of the reservation population those years.

The dates of the invoices which the defendant submitted as representative of the expenditures claimed for clothing offsets, the items listed thereon, the reservation population, the number of children attending school, the number of Indian laborers working on the reservation, and related data are set out below.

<u>Date of Invoice</u>	<u>Items Listed</u>	<u>Reservation Population</u>
9/2/1884	48 pair men's boots	836
	60 " boy's "	
	100 " men's shoes	
	50 " boy's "	
	6 " men's rubber boots	

Seventy Indians performed manual labor that year, part of which consisted in the construction and repair of agency buildings and roads.

In 1884, the school population was 51. There were approximately 167 children between the ages of 6 and 16 considered school age children, about 20 percent of the reservation population. In addition to the superintendent, agency employees included the blacksmith, the agency farmer, the clerk, two Indian farm supervisors, a school teacher, and, at times, a physician. School pupils assisted with livestock, crops, obtaining wood for agency use, and other manual work around the reservation.

<u>Date of Invoice</u>	<u>Items Listed</u>	<u>Reservation Population</u>
9/3/1885	100 pair men's shoes	300 Western Shoshones
	50 " " boots	100 Paiutes (approx.)
	20 " boys' "	
	20 " " shoes	
	125 " women's shoes	

About 160 of the reservation population were women. The agency also had 3,300 non-reservation Indians under its care. Eighty Indians on the reservation were listed as doing civilized labor, a great deal of which consisted in construction work for agency and administrative purposes.

In addition to such labor for agency and school, the Indians also supplied some produce such as butter.

The average school attendance in 1885 was about 19 pupils. The reservation's school age population was about 60.

An invoice dated August 19, 1886, lists an expenditure of \$10.75 for eight dozen pair of children's and misses woolen hose. In the fall of 1886 there were 380 Shoshones and 115 Paiutes living on the reservation. Children of school age numbered about 100, but the number of children and misses was larger if girls between 16 and 18 and children under six are counted.

An invoice of October 25, 1887, shows the purchase of 40 boy's duck overalls and 100 men's overalls. The total reservation population was 411. The average school attendance in 1887 was 35.

An invoice of September 14, 1888, shows the purchase of 50 boys' pants and 50 men's pants. The average attendance at school that year was 53. The reservation population was 475, 51 percent of which was Shoshone.

An invoice of August 20, 1889, lists the purchase of 25 boys' overcoats. The total reservation population was 477. 109 children of school age lived on the reservation that year. School enrollment for 1889 was 50.

An invoice of October 15, 1890, shows the purchase of 50 men's jeans coats. That year the population of the reservation was 587 of whom 384

were Shoshones. There were 117 male Shoshones over 18 years at the time. If the coats were allocated proportionately, approximately 33 coats would have been issued to Shoshone males.

An invoice of August 20, 1891, lists the following:

25	pair	of	men's	shoes
"	"	"	boys'	"
50	"	"	women's	shoes
25	"	"	misses	"
"	"	"	children's	shoes

The reservation population was 590, 62% of whom were Shoshones. There were 209 children on the reservation in 1891, 150 of whom were of school age. Fifty-five children were enrolled in school.

The following purchases are listed in an invoice of July 31, 1893:

25	pair	of	women's	shoes
20	"	"	misses	"
25	"	"	children's	shoes

The reservation population was 628 that year, approximately 67% of whom were Shoshones. The average number of children enrolled in school in 1893 was 44 out of a population of 242 under the age of 16. The quantity of shoes purchased for misses and children approximates the number of school pupils that year. The quantity was not sufficient to amount to a tribal benefit.

The evidence of expenditures for clothing for 1894 which the defendant submitted as representative 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 the invoice does not indicate this. However, the 1894 report to the Commissioner of Indian Affairs from the superintendent of the Western Shoshone school stated that the 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.

An invoice of September 5, 1895, shows that the purchase of 192 pair socks, assorted sizes, for men, women, misses, and children. In 1895, the reservation population was 618, 68% Shoshone. The number of socks purchased (approximately 130 pair of socks if distributed in proportion to the population would have been issued to 418 Shoshones) did not amount to a tribal benefit. The purchase may have benefited school pupils, individual Indians in exchange for agency work, and agency employees.

Fifty pair of men's shoes and fifty pair of boys' shoes are listed on an invoice of August 14, 1896, as representative of clothing expenditures for offsets claimed that year. The reservation population was 620 in 1896. School enrollment that year was 53. Thirty-three Indians performed civilized labor including 225 days labor on the reservation roads in 1896. The quantities of shoes purchased are insufficient to amount to a tribal benefit.

The voucher showing the purchase in 1897 of 50 shawls was not evidence of a tribal benefit at a time when approximately 210 women over the age of 14 years lived on the reservation.

The remaining invoices submitted showed purchases as follows:

<u>Year</u>	<u>Item Purchased</u>	<u>Reservation Population</u>
1898	60 women's hose " men's woolen socks	556
1899	50 shawls (cost; \$68.50)	572
1900	30 men's shirts	450
1901	20 men's coats " " vests " " pr. pants	446
1902	25 caps	450
1916	12 shawls	604

None of these purchases is sufficient to amount to a tribal benefit.

The amounts claimed as offsets for clothing after 1904 listed below, with no identification as to what the expenditures were for, included the following:

	<u>Offset Claimed</u>	<u>Shoshone population</u>
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 are too small in relation to the reservation population to amount to tribal benefits.

The amounts which the defendant claimed as offsets for clothing expenditures during the years 1942, 1943, and 1944 were disbursed from funds for the support and rehabilitation of needy Indians.

Amounts spent from such funds are not proper offsets.

Many of the reports of the Western Shoshone agents to the Commissioner of Indian Affairs during the early years for which offsets are claimed state that rations were issued only to those who performed labor and to the sick, aged, and destitute who could not get along otherwise. The invoices for clothing considered herein generally do not list purchases of a sufficient quantity of items to show an intent to supply the tribe.

82. Soil and Moisture Conservation Expenses. The defendant claims \$40,047.14 in gratuitous offsets as a result of expenditures for soil and moisture conservation operations which benefited the plaintiff.

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 ^{9/}

^{9/} 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.

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

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 very 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.

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.

The defendant claimed, for the year 1949, offsets for soil and moisture conservation expenses totaling \$20,928.10. The General Services accounting 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 and Carson agencies 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) for which soil conservation equipment and supplies might be used. Assuming tribal consent, the condition of land and water resources within the agency's jurisdiction, and the physical factors affecting their improvement, not the relative population of Western Shoshone and other Indians in the area, determined which lands received benefits of the soil and moisture conservation expenditures. The defendant's request for gratuitous offsets for expenditures for soil and moisture conservation operations will be denied.

83. 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, 1897, and 1906 as shown by representative vouchers in Defendant's Exhibit O-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, often needing 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.

Descriptions of farming conditions at the Duck Valley Reservation in the early reports of the Indian Agents to the Commissioner indicated that the agency equipment for harvesting grain crops was inadequate.

In the years 1883 through 1886, a tract of about 250 acres, a relatively small proportion of the reservation, was used for cultivating grain. Some reservation Indians had separate individual garden plots for growing vegetables, fruit, and grain for their personal use. Grain and flour for the agency, for agency livestock, for the school and school livestock, and to the extent available, for the Indians

and their livestock were obtained from the grain grown on the reservation tract. The grain was produced for the benefit of the agency, the school, the livestock, and the Indians on the reservation. In 1885 when a combined mowing and reaping machine was purchased for which the defendant claims an offset, the machine was used by the Indians to thresh all of the year's crop of wheat and barley "without accident or breakdown under the supervision of two Indian farmers" to whom the agent had given instruction. In his report to the Commissioner that year, the Western Shoshone agent praised the abilities of the Indians to learn the arts of industry of the farm and of raising livestock. The report indicates that the Indians raised a sufficient amount of wheat the previous year so that the Government had no expense for flour for the agency.

By 1891, there was only one reaping machine (condemned) which the Western Shoshone agent was hoping to repair sufficiently to cut the school grain. In 1890, five Indians who had earned money hauling freight bought good mowing machines and cut hay for a large number, but were dependent on the agency for grain cutting machinery. In 1893, the supply of agricultural equipment, except for mowers and reapers, was sufficient, and in 1894, some of the Indians were harvesting barley, oats, and wheat, using sickles in cutting and horses in tramping out the grain, while a few had the use of labor-saving machinery. In 1894 the agency reportedly needed a half-dozen combined mowers and reapers, four 2-horse hay rakes, and a hay press.

Reports of the Commissioner of Indian Affairs remarked that the Western Shoshone Indians used their own funds to buy livestock and farming equipment at various times. The reports indicate also that farming implements were issued to Indian labor from time to time. Thus, the report to the Commissioner in 1902 from the superintendent in charge of the Western Shoshone agency stated:

Some work has been done on the roads, to repair bridges and keep them in good condition for the travel and freighting, and they are mostly good roads for the country, and the bridges are in fair condition. This work and much repair work on the irrigating ditches has been done by the Indians in payment for issue of wagons and various supplies, and since they are fully convinced that these are the terms of issue, they do it with a very good will in most cases.

Since some agricultural implements and equipment were issued to Indians in exchange for work on roads and highways, and since expenses for this purpose may not be allowed as gratuitous offsets, deductions for the cost of farm implements supplied in exchange for highway work should have been taken before offsets for agricultural equipment were claimed. In addition, some of the offsets claimed for this category of expenses represented amounts disbursed for the agency. Such amounts are not proper offsets.

A report of April 23, 1921, to the Commissioner of Indian Affairs on the Western Shoshone agency by an inspector for the Indian Service explained that the Indians' tribal funds were obtained from fees for grazing leases on tribal lands of the reservation. (These funds were

sometimes referred to as "grass money" in the annual reports of the Commissioners of Indian Affairs.) The report of April 23, 1921 (pls. offsets ex. 42), stated that tribal funds were used to purchase stock and implements under reimbursable agreements, adding that the Indians were glad to make purchases in this way, and met their payments when due.

The accounting report shows that \$18,596.91 of the tribal funds of the Indians of Duck Valley Reservation were used to purchase agricultural implements and equipment between 1908 and 1949. Disbursements for farming implements and equipment were made from plaintiff's tribal funds in 1908, 1909, every year from and including 1911 through 1935, and in 1938, 1940, 1941, and 1949. Further, the accounting report indicates that disbursements for agricultural implements and equipment claimed as offsets were made 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 use in the accounting report of warrant numbers and dates only as identification of most of the disbursements from trust funds makes it impossible to determine on this record the extent to which tribal funds were used to reimburse the defendant for purchases of farming equipment for which most of the offsets are claimed.

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 United States for reimbursement of the price of the items, as agreed to by the Indians. The defendant presumably has information indicating the extent of the purchase of farming equipment by use of tribal funds under reimbursable agreements.

In sum, no deductions were taken from the offsets claimed for farming equipment issued to Indians in exchange for work on the roads and similar administrative work, which costs represent administrative expenses excluded by statute from allowance as gratuitous offsets. Tribal funds were used to reimburse the United States for purchases of some agricultural implements and equipment, but the extent of this use of tribal funds is not possible to determine from this record. As the defendant has not proved that it is entitled to the offsets claimed for this category of expenditures, the offsets will be disallowed.

84. 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 & 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.

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

85. 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 time period. The amounts spent on an annual basis for each of the categories was 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 presumably were used for school cooking classes or for other administrative purposes. 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 items for each year is too few to have constituted a tribal benefit, the offsets claimed for these three categories will be disallowed.

86. 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 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, arranged for the appraisal of the improvements, and urged passage of legislation providing for their payment. (Letter of November 9, 1883, from the Commissioner of Indian Affairs to the Secretary of the Interior, in Exec. Doc. No. 13, 48th Cong., 1st Sess., (1883.) 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 tribe benefited from this expenditure. The amount will be disallowed as an offset.

87. 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, \$954.20 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. Expenditures from such funds may not be claimed as offsets.

Testimony at the hearing on offsets indicated that expenses for housing on a scale to benefit the tribe were not incurred by the defendant during the years 1942 and 1943. The amount will be disallowed as a gratuitous offset.

88. Clearing, Breaking, Fencing Land. The defendant asserts that \$2,978.90 was gratuitously 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 discussed in our opinion. 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 percent to reflect the proportionate share of benefits which the Paiutes presumably received from the expenditures. Also, in 1903, although only 47 percent of the expenditures should have been allocated to the Western Shoshones, not 100 percent, as the defendant charged, the amount spent that year was small, being \$30.41. Amounts spent for each year listed after 1910, except for 1945, were all below \$40. 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. The amount claimed for this category of offsets will be disallowed as expenditures on a scale to benefit the plaintiff were not shown, and agency costs for this item were not shown to have been deducted.

89. Miscellaneous Building Material. The defendant claims offsets 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." The amount will be disallowed.

90. Seeds, Fruit Trees, and Fertilizers. The offsets claimed for seeds, fruit trees, and fertilizers amount, in all, to \$1,249.38 between 1885 and 1947. There is no indication that the claimed amounts were not spent for agency or school purposes, expenditures which are excluded by statute as a basis for offsets.^{10/} For most of the years for which

^{10/} A report in 1896 to the Commissioner of Indian Affairs from the Duck Valley Reservation indicated that \$3,000 worth of seeds spent for reservation lands were used for school and agency purposes and for 20 "deserving" families.

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 expenditures for seeds, fruit trees, and fertilizers did not amount to tribal benefits. According to the accounting report, the amount claimed for 1944 was disbursed from funds for needy individual Indians. The offsets claimed for this type of expenditures will be disallowed.

91. 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 of 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. 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'.

92. 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.

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 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 1897, the school had 21 head of cattle and 3 horses.

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

93. Hunting and Fishing Equipment. The defendant claims gratuitous offsets of \$208.32 for hunting and fishing equipment for the plaintiff.

For the second of the years for which expenditures are claimed, the defendant should have allocated 72 percent rather than 100 percent 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 of irrigation water. The agency and school benefits are not shown to have been deducted from this expenditure. Offsets for this category will be disallowed.

94. 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.

95. 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.

96. 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. This will be disallowed.

97. Payment on the Claim. The parties agreed in their proposed findings and briefs, subject to qualifications which are here immaterial, 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. The proposed findings and pleadings were filed before the amendment of section 2 of the Indian Claims Commission Act by the Act of October 27, 1974, P. L. No. 93-494, which provides that expenditures for food, rations, or provisions shall not be deemed payments on the claim. The accounting report in this proceeding shows that the United States expended \$96,763.18 in fulfilling the treaty with the Shoshones, Western Bands. Of this amount, the report indicates that there is no way of determining whether \$13,155.94 was spent for the benefit of the Indians.^{11/} That amount will not be deducted as a payment on the claim involved in this proceeding.

The defendant's exhibit 0-1 is the accounting report in this docket (and in Dockets 326 and 326-A) prepared by the General Services Administration. Disbursement Schedule No. 2 therein lists expenditures under

^{11/} 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.

Article 7 of the Treaty of Ruby Valley which total \$83,607.24. The schedule, listing the items and amounts spent under Article 7 follows:

FROM DISBURSEMENT SCHEDULE NO. 2

<u>Treaty of October 1, 1863</u>	<u>Total</u>
Article 7	
Agricultural aid:	
Clearing, breaking, and fencing land	\$ 120.00
Pay of farm laborers	355.75
Seeds, fruit trees, and fertilizer	749.54
Agricultural implements and equipment	2,920.83
Clothing	41,396.15
Expenses issuing annuity goods	116.67
Fuel and light	16.00
Hardware, glass, oils, and paints	125.65
Household equipment and supplies	7,242.58
Hunting and fishing equipment	1,481.78
Livestock:	
Feed and care of	526.01
Purchase of	5,905.50
Medical expenses:	
Equipment and supplies	690.85
Pay of physician	1,330.72
Mills and shops:	
Grist mill:	
Purchase of portable mill	300.00
Miscellaneous agency expenses	392.63
Paid for blacksmithing	5.50
Pay of clerk	783.61
Pay of farmer	6,677.13
Pay of inspector	12.40
Pay of interpreter and manager	245.00
Presents to Indians	8.00
Provisions	9,763.31
Storage of Indian supplies	8.89
Transportation of Indian supplies	<u>2,432.74</u>
Total	\$83,607.24

Conclusory Finding of Fact. The purchases shown in Disbursement Schedule No. 2 with the exception of certain individual services, are similar to or identical with the goods and services which the Commission, in Prairie Band of Pottawatomie, 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 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 payment 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	<u>245.00</u>
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.

Final Award. In our interlocutory order of October 11, 1972 (29 Ind. Cl. Comm. 5, 124), the Commission concluded that, subject to allowable offsets to which the defendant might be entitled, the plaintiff was entitled to recover the fair market value of the Nevada lands in this suit on July 1, 1872, of \$21,350,000.00; of the California lands in this suit on March 3, 1853, of \$200,000.00, making a total of \$21,550,000.00 under Clause 4, Section 2 of the Indian Claims Commission Act; and that plaintiff was entitled, under Clause 5, Section 2 of the Indian Claims Commission Act, to recover \$4,604,600.00, subject to deductions for payments on the claim made by the defendant under the Treaty of Ruby Valley (29 Ind. Cl. Comm. 122).

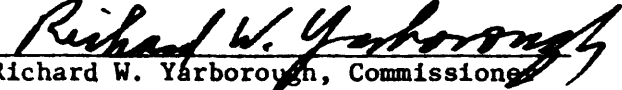
In accordance with our opinion and findings herein, \$9,410.11 is to be deducted as payment on the claim in this case, no deductions for offsets are due, and the plaintiff is entitled to a final award of \$26,145,189.89. A final judgment in this amount is entered today.


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner