

BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE, et al.,)	
on Behalf of the Chippewas of)	
Lake Superior,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 18-U
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 30, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 - 10, previously entered herein, 14 Ind. Cl. Comm. 360 (1964), and the findings numbered 11 - 24, previously entered herein, 25 Ind. Cl. Comm. 55, 62-81 (1971).

25. Consideration Promised. The promised consideration under the Treaty of September 30, 1854, 10 Stat. 1109, is set forth in Articles 2, 4 and 5 of the Treaty, as follows:

Article 2. The United States agree to set apart and withhold from sale, for the use of the Chippewas of Lake Superior, the following described tracts of land, viz:

1st. For the L'Anse and Vieux De Sert bands, all the unsold lands in the following townships in the State of Michigan: Township fifty one north range thirty-three west; township fifty-one north range thirty-two west; the east half of township fifty north range thirty-three west; the west half of township fifty north range thirty-two west, and all of township fifty-one north range thirty-one west, lying west of Huron Bay.

2d. For the La Pointe band, and such other Indians as may see fit to settle with them, a tract of land bounded as follows: Beginning on the south shore of Lake Superior, a few miles west of Montreal River, at the mouth of a creek called by the Indians Ke-che-se-be-we-she, running thence south to a line drawn east and west through the centre of township forty-seven north, thence west to the west line of said township, thence south to the southeast corner of township forty-six north, range thirty-two west, thence west the width of two townships, thence north the width of two townships, thence west one mile, thence north to the lake shore, and thence along the lake shore, crossing Shagwaw-me-quon Point, to the place of beginning. Also two hundred acres on the northern extremity of Madeline Island, for a fishing ground.

3d. For the other Wisconsin bands, a tract of land lying about Lac De Flambeau, and another tract on Lac Court Orielles, each equal in extent to three townships, the boundaries of which shall be hereafter agreed upon or fixed under the direction of the President.

4th. For the Fond Du Lac bands, a tract of land bounded as follows: Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians Paw-paw-sco-me-me-tig, running thence west to the boundary-line heretofore described, thence north along said boundary-line to the mouth of Savannah River, thence down the St. Louis River, to the place of beginning. And if said tract shall contain less than one hundred thousand acres, a strip of land shall be added on the south side thereof, large enough to equal such deficiency.

5th. For the Grand Portage band, a tract of land bounded as follows: Beginning at a rock, a little east of the eastern extremity of Grand Portage Bay, running thence along the lake shore to the mouth of a small stream called by the Indians Maw-ske-gwaw-caw-maw-se-be, or Cranberry Marsh River, thence up said stream, across the point to Pigeon River, thence down Pigeon River to a point opposite the starting-point, and thence across to the place of beginning.

6th. The Ontonagon band and that subdivision of the La Pointe band of which Buffalo is chief, may each select, on or near the lake shore, four sections of land, under the direction of the President, the boundaries of which shall be defined hereafter. And being desirous to provide for some of his

connections who have rendered his people important services, it is agreed that the chief Buffalo may select one section of land, at such place in the ceded territory as he may see fit, which shall be reserved for that purpose, and conveyed by the United States to such person or persons as he may direct.

7th. Each head of a family, or single person over twenty-one years of age at the present time of the mixed bloods, belonging to the Chippewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them under the direction of the President, and which shall be secured to them by patent in the usual form.

Article 4. In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums, to wit: five thousand dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. The United States will also pay the further sum of ninety thousand dollars, as the chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of six thousand dollars, in agricultural implements, household furniture, and cooking utensils, to be distributed at the next annuity payment, among the mixed bloods of said nation. The United States will also furnish two hundred guns, one hundred rifles, five hundred beaver-traps, three hundred dollars' worth of ammunition, and one thousand dollars' worth of ready-made clothing, to be distributed among the young men of the nation, at the next annuity payment.

Article 5. The United States will also furnish a blacksmith and assistant, with the usual amount of stock, during the continuance of the annuity payments, and as much longer as the President may think proper, at each of the points herein set apart for the residence of the Indians, the same to be in lieu of all the employees to which the Chippewas of Lake Superior may be entitled under previous existing treaties.

26. Value of the Consideration. The value of the promised consideration is as follows:^{1/}

Article 2 - Reservations for the Chippewas of Lake Superior

L'Anse and Vieux Desert		\$ 52,848.41
LaPointe (Bad River)		74,396.00
Madeline Island		244.00
Lac du Flambeau		50,232.72
Lac Courte Oreilles		51,852.30
Ontonagon		3,189.00
Red Cliff (Buffalo)		<u>3,240.76</u>
Total		\$236,003.19

Article 4

Annuities for 20 years		
In Coin	\$5,000.00	\$100,000.00
Goods, etc.	8,000.00	160,000.00
Agricultural Imps.	3,000.00	60,000.00
Education	3,000.00	60,000.00
One time payments		
As chiefs direct		90,000.00
Agricultural implements, etc. to mixed bloods		6,000.00
Guns, traps & ammunition		3,550.00
Ready made clothing		<u>1,000.00</u>
Total		\$480,550.00

Article 5

The United States promised to furnish seven blacksmiths and equipment for twenty years. This was an annual obligation of \$7,000.00 or \$140,000.00 for the entire period. However, the Article 5 obligations

^{1/} See finding 28, infra, for valuation of the Article 2 reservations.

to furnish blacksmiths and supplies extended commitments which had been made under two previous treaties. Therefore only that portion of the Article 5 payments which exceeded the obligations remaining under the previous treaties was part of the consideration for the cession under the 1854 Treaty.^{2/} The value of the remaining consideration under the two previous treaties, on the 1854 Treaty ratification date of January 10, 1855, was:

Treaty of July 29, 1837, 7 Stat. 536	
Art. 2(3) Blacksmith shops	
\$3,000.00 per year for 3 years	\$ 9,000.00
Art. 2(4) Farmers and supplies	
\$1,000.00 per year for 3 years	3,000.00
Treaty of October 4, 1842, 7 Stat. 591	
Article IV	
Blacksmith shops - \$2,000.00 per year	
for 12 years	24,000.00
Farmers - \$1,000.00 per year for	
12 years	12,000.00
Carpenters - \$1,200.00 per year for	
12 years	14,400.00
Support of schools - \$2,000.00 per	
year for 12 years	<u>24,000.00</u>
Total	\$86,400.00

Since one-half of these annuities was for the Chippewas of Lake Superior, their share of the promised payments was \$43,200.00.

The value of the Article 5 consideration was:

^{2/} See 35 Ind. Cl. Comm. 427, 443-4.

Blacksmith and equipment - \$7,000.00 per year for 20 years	\$140,000.00
Less value of remaining consideration - 1837 and 1842 Treaties	<u>43,200.00</u>
Total	\$ 96,800.00

Summary

Article 2	\$236,003.19
Article 4	480,550.00
Article 5	<u>96,800.00</u>
Total	\$813,353.19

27. Unconscionability. The Commission finds that the promised consideration of \$813,353.19 for land having a fair market value of \$3,250,000 was so grossly inadequate as to render that consideration unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050.

Payments on the Claim

28. Article 2 Reservations. The value of the Article 2 consideration was the January 10, 1855, fair market value of certain reservations set aside for the Chippewas of Lake Superior. The reservations to be so valued are the seven Article 2 reservations which were outside the ceded tract (Royce Area 332).

Defendant's expert witness was Mr. Richard B. Hall, an expert real estate appraiser who testified and presented a written report on the fair market value of the reservations. Mr. Hall considered a variety of factors for each of the reservations. As outlined in his report, he considered

the locations of the areas and their accessibility. He tabulated the surveyors' notes and considered the notations concerning the presence of timber, the character of the soils, and the vegetation in each of the townships involved. He noted the topography and drainage of the lands and the settlements in or close to the reservations. He considered the highest and best use for each of the reservations. Mr. Hall gave his opinion as to the fair market value of each of the reservations as of January 10, 1855. Applying his per acre value figures to the acreages included in each of the reservations, defendant has computed the following values:

	<u>Acres</u>	<u>Per Acre Value</u>	<u>Value</u>
L'Anse or Vieux Desert or Keweenaw Bay - Royce Area 333, Mich. 2	52,848.41	\$1.00	\$ 52,848.41
Bad River or La Pointe - Royce Area 334, Wisc. 2	123,993.70	.60	74,396.00
Madeline Island - Royce Area 335, Wisc. 2	195.71	1.25	244.00
Lac du Flambeau - Royce Area 336, Wisc. 2	50,232.72	1.00	50,232.72
Lac Courte Oreilles - Royce Area 337, Wisc. 2	69,136.41	.75	51,852.30
Ontonagon - Royce Area 340, Mich. 2	2,551.35	1.25	3,189.00
Red Cliff - Royce Area 341, Wisc. 2	<u>2,592.61</u>	1.25	<u>3,240.76</u>
	301,550.91		\$236,003.19

Plaintiffs did not present any evidence concerning the fair market value of the reservations. Rather they have accepted Mr. Hall's valuation conclusions as one of the bases for their calculations of the credit to be allowed as a payment on the claim.

The Commission finds that the January 10, 1855, fair market value of the seven reservations was \$236,003.19, and this sum is allowed as a payment on the claim.

29. Article 4 Payments -- \$473,873.98. Defendant has claimed credit for disbursements totalling \$473,873.98 under Article 4 of the treaty. Our findings with respect to each of the Article 4 categories are as follows:

1. Cash Annuity

The treaty provided for annual payments of \$5,000.00 for 20 years or a total of \$100,000.00. Defendant's General Accounting Office report lists yearly Article 4 cash payments totalling \$100,878.60. Defendant claims credit as a payment on the claim for \$100,000.00 of this amount, leaving the \$878.60 as a gratuitous offset claim. In support of the claim for cash payments defendant has introduced representative vouchers for annuity cash payments to the Chippewas of Lake Superior. The vouchers support the sums claimed for the respective years involved. The claim for \$100,000.00 is allowed as a payment on the claim.

2. Annuity "goods, household furniture and cooking utensils."

Defendant claims a credit of \$145,092.27 expended under this category. The General Accounting Office report indicates this amount was spent for "goods." Section 2 of the Indian Claims Commission Act, 60 Stat. 1050, provides that expenditures for food, rations, or provisions shall not be deemed payments on the claim.^{3/} Goods supplied to the Indians related to their basic subsistence needs, and the \$145,092.27 spent in supplying such items were expenditures for food, rations, and provisions within the purview of the 1974 amendment. The expenditures for annuity goods are not allowed as payments on the claim.

3. Annuity "agricultural implements and cattle, carpenter's and other tools and building materials."

Defendant lists payments totalling \$63,212.94 under this category. The disbursements are listed as:

Agricultural implements and equipment	\$55,164.75
Feed and care of livestock	3,729.78
Hardware, glass, oils and paint	<u>4,318.41</u>
	\$63,212.94 ^{4/}

^{3/} Act of October 27, 1974, Pub. L. No. 93-494 (88 Stat. 1499).

^{4/} Because of an apparent mathematical error defendant has totalled these items at \$63,216.94.

Since this provision of the treaty required expenditures of only \$60,000.00, defendant claims that amount as a payment on the claim--leaving the excess payments as part of the gratuitous offsets claim. However, all of the listed items related to the Indians' basic subsistence needs, and, as such, they are within the precluded category of food, rations, or provisions. The claimed payments in this category are disallowed as payments on the claim.

4. Annuity for "moral and education purposes."

Under this category defendant lists disbursements of \$60,526.68, spent as follows:

Board and Tuition	\$ 14,180.30
Books and stationery	1,597.43
Clothing	849.02
Erection & repair of schools	6,433.33
Fuel, light & water	1,340.75
Furniture & equipment	618.32
Insurance on buildings	31.50
Pay of teachers	35,172.15
Provisions	72.74
School farm	204.00
Transportation of supplies	27.14

Payments for board of Indians are barred as payments on the claim by the 1974 amendment to Section 2 of the Indian Claims Commission Act. Defendant has not introduced any evidence to establish what portion of the \$14,180.30 spent under the "board and tuition" category was for purposes within the precluded category of food, rations, or provisions. In the absence of any proof on this issue we must disallow all the board and tuition expenditures as payments on the claim. Expenditures for clothing (\$849.02),

provisions (\$72.74), school farm (\$204.00), and transportation of supplies (\$27.14) are likewise within the precluded category. Those disbursements totalling \$15,333.20 are disallowed as payments on the claim. The remaining payments of \$45,193.48 are allowed as payments on the claim.

5. To enable the chiefs "to meet their present just engagements."

The defendant expended \$85,000.00 under this category for the "payment of tribal debts." The sum of \$85,000.00 is allowed as a payment on the claim.

6. Agricultural implements, household furniture, and cooking utensils for the mixed bloods.

The defendant claims credit for \$6,000.00 expended under this category. However, disbursements for agricultural implements, household furniture, or cooking utensils would have related to the Indians' basic subsistence needs, and, therefore, such expenditures are within the precluded category of food, rations or provisions. The claim in this category is disallowed as a payment on the claim.

7. Guns, rifles, beaver traps, and ammunition.

The United States expended \$8,148.07 for "guns, annunition and traps." However, defendant asserts that only \$4,466.00 of this amount was disbursed in fulfillment of Article 4 obligations, which were to furnish "two hundred guns, one hundred rifles, five hundred beaver traps, [and] three hundred dollar'sworth of ammunition." No evidence has been presented concerning the cost of the specific items, and the General Accounting

Office report lists the full amount of \$8,148.07 as expenditures made in fulfilling obligations under the Treaty of September 30, 1854. We find that the entire sum of \$8,148.07 was expended in fulfillment of treaty obligations. The purchases under this category were for purposes relating to the basic subsistence needs of the Indians. The \$8,148.07 was expended for food, rations, and provisions within the purview of the 1974 amendment, and the entire amount is disallowed as a payment on the claim.

8. Ready-made clothing

Defendant claims credit for \$1,000.00 out of some \$15,739.02 disbursed under this category. However, expenditures for clothing are within the precluded category of food, rations, or provision, and the claim for \$1,000.00 is disallowed as a payment on the claim.

Summary

The items allowed as Article 4 payments on the claim are:

1. Cash annuity	\$100,000.00
2. Annuity goods	00.00
3. Agricultural implements	00.00
4. Moral and educational	45,193.48
5. Payment of debts	85,000.00
6. Agricultural implements	00.00
7. Guns, etc.	00.00
8. Clothing	<u>00.00</u>
Total	\$230,193.48

30. Article 5 Payments -- \$131,798.90. Defendant claims a total of \$131,798.90 disbursed under Article 5 for blacksmith supplies and pay of blacksmiths. However, \$43,200.00 of this amount represented consideration which was attributable to the Treaties of 1837 and 1842.^{5/} Deducting this sum leaves a balance of \$88,598.90 as the amount paid as consideration for the cession under the 1854 Treaty. The sum of \$88,598.90 is allowed as a payment on the claim.

31. Conclusion -- Payments on the Claim. Defendant is entitled to offset the following amounts as payments on the claims:

Article 2	\$236,003.19
Article 4	230,193.48
Article 5	<u>88,598.90</u>
Total	\$554,795.57

Gratuitous Offsets

32. Clearing, Breaking, and Fencing Land -- \$728.74. The claimed expenditures in this category were made in eight years between 1908 and 1938. Of the eleven items listed, eight were under \$53.00. The largest was a 1932 expenditure of \$236.75 for the Bad River Band of Chippewas, a band which numbered about 1,300 Indians. The expenditures in this category were too low to support an inference that they constituted a tribal benefit, and they are disallowed as gratuitous offsets.

^{5/} See finding 26, supra.

33. Wells and Well Equipment -- \$159.65. In 1898 five wells were dug to improve the water supply for Indians at the Lac du Flambeau Reservation. The cost was \$50.00. In 1944, \$109.65 was disbursed under this category for Chippewa Indians on the L'Anse and Ontonagon Reservations. These expenditures totalling \$159.65 are allowed as gratuitous offsets.

34. Seeds, Fruit Trees, and Fertilizer -- \$5,176.55. The claimed disbursements in this category were made in 23 years between 1878 and 1945. During this period there were a total of 44 yearly payments to various bands of Lake Superior Chippewas. The yearly expenditures were too small to support an inference that they constituted a tribal benefit, and they are disallowed as gratuitous offsets.

35. Agricultural Implements and Equipment -- \$9,596.65. There were 68 expenditures under this category totalling \$9,596.65. Many of them represent portions of larger disbursements since some of the items were asserted as gratuitous offsets in the Bois Forte Chippewa case, Docket 18-D.^{6/} The largest disbursement was \$1,727.32 in 1942 for the purchase of a tractor and attachments for use of the Chippewa Indians of the L'Anse and Ontonagon Reservations, Michigan. The other large expenditure was \$1,187.67 in 1943 for the same Indians. We find these disbursements were a tribal benefit, and the sum of \$2,914.99 is allowed as a gratuitous offset.

^{6/} All of the claimed offsets in this category were disallowed in that case, Bois Forte Band v. United States, 39 Ind. Cl. Comm. 300.

The remaining claim for \$6,681.66 is made up of small items. The yearly expenditures for any one band did not exceed \$300.00 and 41 of them were for \$100.00 or less. Such disbursements were too small to support an inference that they constituted a tribal benefit, and they are disallowed.

36. Odanah Project -- \$2,647.23. Defendant claims the expenditure of \$2,647.23 in 1942 for building materials for the "Odanah Project." Odanah is the principal town in the Bad River Indian Reservation. The vouchers submitted in support of this claim indicate that a building of some sort was constructed. However, the Commission is unable to determine whether this building was for a tribal, agency, or individual purpose. This claim is disallowed as a gratuitous offset.

37. Clothing -- \$13,776.39. There were 61 items of expenditures made in 15 years for purchases of clothing. Most of them, 57 in all, were made in the eleven year period from 1876 through 1886. The largest disbursement was \$794.47 in 1876 for the Chippewa Indians on the L'Anse and Ontonagon Reservations, Michigan. However, defendant has not furnished any population figures to indicate the number of Indians who might have benefited from these purchases. There were five other yearly expenditures above \$400.00. Those amounts and the band populations were:

<u>Year</u>	<u>Band</u>	<u>Clothing</u>	<u>Population</u>
1876	Lac Courte Oreille	\$410.97	1,048
1876	Lac du Flambeau	404.47	665
1881	Lac du Flambeau	448.22	665
1882	Lac Courte Oreille	596.11	1,093
1882	Lac du Flambeau	430.94	665

All the other disbursements were similarly small in relation to the population of the bands involved. We find the expenditures in this category too small to support an inference that a tribal benefit was conferred. They are disallowed as gratuitous offsets.

38. Hardware, Glass, Oils, and Paint -- \$2,964.72. There were 35 items of expenditures in the category. The largest was \$253.53 expended in 1896 for the Chippewa Indians of the La Pointe Agency, Wisconsin, which had a total of 3,856 Chippewa under its jurisdiction.^{7/} Twenty-five of the items were for less than \$100.00. We find the disbursements in this category too small to support an inference that they constituted a tribal benefit, and they are disallowed.

39. Household Equipment and Supplies -- \$16,218.49. Defendant claims 73 expenditures under this category. There were four items of over \$500.00, as follows:

<u>Year</u>	<u>Indians</u>	<u>Expenditure</u>	<u>Population</u>
1876	Lac Courte Oreille	\$552.91	1,048
1883	Lac Courte Oreille	626.41	841
1885	La Pointe Agency	656.22	2,958 ^{8/}
1886	La Pointe Agency	684.36	3,094 ^{8/}

^{7/} This does not include the 759 Bois Forte Indians, whose pro-rata share of this expenditure was claimed and disallowed in *Bois Forte Band v. United States*, 39 Ind. Cl. Comm. 300.

^{8/} These figures do not include the Bois Forte Indians, whose pro-rata share of these expenditures was claimed and disallowed in *Bois Forte Band v. United States*, supra.

All the other items of expenditures were for less than \$400.00. We find all the claimed disbursements in this category too small to support an inference that they constituted a tribal benefit, and they are disallowed as gratuitous offsets.

40. Hunting and Fishing Equipment -- \$5,331.55. Between 1862 and 1886 defendant lists 60 items of expenditures under this category. Forty-four of the items were for \$100.00 or less. The largest was \$303.68 expended in 1876 for the Red Cliff Band, which numbered 726 Indians in that year. The claimed disbursements for hunting and fishing equipment are too small to support an inference that they constituted a tribal benefit, and they are disallowed.

41. Purchase of Land -- \$357,346.47. During the period from 1936 through 1951 defendant claims disbursements of \$357,346.47 for the purchase of land for the various bands of Lake Superior Chippewas. In support of its claim defendant has introduced copies of payment vouchers for some of the transactions. They are representative of the vouchers used by the accountants to compile the record of disbursements for the land purchases. Defendant has also produced copies of deeds and a condemnation judgment relating to most of the purchases for which vouchers were introduced. For one of the transactions the payment voucher indicates that the land was purchased for the Fond du Lac Band (Def. Ex. 24-S, part 7). However, the warranty deed was introduced into evidence as defendant's exhibit 40-S, and it establishes that the conveyance, dated March 3, 1948, was to the United States in trust for the Minnesota Chippewa Tribe. Such a land

purchase is not a proper offset against an award to the Chippewa Indians of Lake Superior. The only allowable offsets for land purchases are those for which defendant has established that title to the land did in fact pass to a band of Lake Superior Chippewas. There were land purchases totalling \$54,347.80 for which there is such evidence. They are:

<u>Def. Ex.</u>	<u>Date</u>	<u>Lake Superior Indians</u>	<u>Amount</u>
33-S	12/23/35	Grand Portage	\$21,232.95
35-S	3/6/36	Grand Portage	7,875.00
36-S	12/9/40	Grand Portage	5,976.20
37-S	12/9/40	Grand Portage	398.86
38-S	12/9/40	Grand Portage	274.94
39-S	9/29/41	Grand Portage	3,080.00
42-S	6/1/39	Keweenaw Bay	3,640.00
43-S	4/10/41	Keweenaw Bay	2,500.00
44-S	7/2/42	Keweenaw Bay	4,400.00
45-S	3/25/41	Keweenaw Bay	1,350.00
46-S	3/1/37	Bad River	3,000.00
47-S	1/13/50	Lac Courte Oreilles	240.93
48-S	2/11/48	Lac du Flambeau	321.75
49-S	3/15/50	Lac Courte Oreilles	46.77
50-S	6/19/50	Lac Courte Oreilles	10.40
		Total	\$54,347.80

The claim for offsets totalling \$54,347.80 for the purchase of land is allowed.

The defendant has not established that the remaining land purchases, totalling \$302,998.67, were for the Chippewas of Lake Superior, and they are disallowed as gratuitous offsets.

42. Feed and Care of Livestock -- \$5,959.35. There were 57 items of expenditures under this category of which 43 were for \$100.00 or less. The remaining items ranged from \$108.22 to a high of \$444.96. All of those 14 items were for the La Pointe Agency, which numbered between

3,000 and 5,000 Indians (excluding Bois Forte) for the years involved. The disbursements were too small to support an inference that a tribal benefit was conferred. The claimed expenditures in this category are disallowed.

43. Purchase of Livestock -- \$2,679.81. There were ten items of expenditures under this category. The largest was \$1,389.35 in 1881. The disbursements totalled \$1,644.20, but \$254.85 was asserted and disallowed in Bois Forte Band v. United States, Docket 18-D, 39 Ind. Cl. Comm. 300, 321. Although there is no evidence in the record in this case to indicate what livestock was purchased, the evidence in Docket 18-D revealed that the expenditure was for the purchase of 13 yoke of oxen for the La Pointe Agency. In 1881 the La Pointe Agency had jurisdiction over some 4,282 Lake Superior Chippewa living on seven separate reservations in Wisconsin and Minnesota. Thus this expenditure appears too small to support an inference that it constituted a tribal benefit. Further, the supporting documentation for the 1891 expenditures for livestock purchases indicates that the livestock was bought for the "use of the government farmers" (Def. Ex. 22-S, part 10). This was an agency expense and not allowable as an offset against an award to the Indians. The expenditures for purchase of livestock are disallowed as gratuitous offsets.

44. Provisions -- \$57,440.55. In support of this claim defendant has presented a large number of items disbursed in 67 years. Most of them are very small. However, there are some more substantial expenditures during a period from 1881 to about 1892--and to a somewhat lesser extent

in the 1900's. In most instances the larger disbursements were not for one band but rather for an agency with jurisdiction over several bands and thousands of Lake Superior Chippewas. For example the largest expenditures in this category were:

<u>Year</u>	<u>Amount</u>	<u>Indians</u>	<u>Population</u>
1881	\$2,513.09	La Pointe Agency	3,618
	1,116.16	La Pointe Agency	
1882	4,079.19	La Pointe Agency	3,942
1883	2,215.67	La Pointe Agency	2,636
	1,922.46	La Pointe Agency	
1884	1,271.56	La Pointe Agency	2,927
	1,467.00	La Pointe Agency	
1885	1,744.45	La Pointe Agency	2,958
1886	975.76	La Pointe Agency	3,094
	735.13	La Pointe Agency	
1888	1,364.50	Grand Portage Band	290
	1,015.04	La Pointe Agency	3,550
1890	1,418.22	La Pointe Agency	4,081
1891	909.70	La Pointe Agency	4,130
1892	1,052.94	La Pointe Agency	4,042
1918	1,044.85	Lac du Flambeau	Not given
1936	1,306.37	Lac du Flambeau	884

When compared to the populations of the Indians benefited by the disbursements, it appears that all but one item of expenditure was less than \$1.50 an Indian for the year. The one exception was the 1888 item of \$1,364.50 for 290 Grand Portage Band Chippewas, or about \$4.70 per member of the band.

We find that all the expenditures for provisions were too small to support an inference that a tribal benefit was conferred, and they are disallowed as gratuitous offsets.

45. Repairs to Dock -- \$1,600. Defendant expended \$1,600.00 in 1871 to repair the dock at the L'Anse Reservation. This claim is allowed as a gratuitous offset.

46. Enlargement of the Red Cliff Reservation -- \$14,128.81. By Joint Resolution of February 20, 1895, 28 Stat. 970, Congress confirmed an Executive Order of February 21, 1856, withdrawing from the public domain 11,303.05 acres and declaring them to be a part of the Red Cliff Reservation. Defendant's appraiser, Mr. Hall, valued the addition at \$1.25 an acre. This was the same value as he placed on the original 2,592.61 acres in the Red Cliff Reservation, which the added acreage adjoined. This addition, valued at \$14,128.81, is allowed as a gratuitous offset.

47. Care and Sale of Timber -- \$282,579.09. Between 1905 and 1951 defendant expended \$298,923.86 for the "care and sale of timber." During the period 1928 through 1951 it collected administrative fees in the amount of \$16,344.77. It is claiming the difference between the two amounts, \$282,579.09, as a gratuitous offset.

Defendant's expenditures for the care of timber can be divided into two segments. The expenditures prior to 1936 were made directly for each reservation. The later expenditures, of about \$225,817.46, were allocated on the Lake Superior Chippewas' per capita share of the total care of timber expenditures of the Consolidated Chippewa Agency, the Great Lakes Agency and the Great Lakes Consolidated Agency, each of which had jurisdiction over other bands as well as some of the seven bands of Lake Superior Chippewas.

In support of its claim under this category defendant has introduced only seven vouchers, as follows:

Def. Ex. 17-S, Part 3, 1911 -- Services of team of horses for use of estimating crew -- Hayward Training School, Wisconsin -- \$22.00

Def. Ex. 17-S, Part 4, 1924 -- Subsistence of fire fighters -- \$42.44

Def. Ex. 17-S, Part 5, 1925 -- Feeding forest guard horses (Government) -- \$97.00

Def. Ex. 17-S, Part 6, 1931 -- Supplies and subsistence for fire fighters on reservation (Lac du Flambeau) -- \$26.82

Def. Ex. 17-S, Part 7, 1936 -- Saw bits, etc. for sawmill project, Odanah -- \$36.20

Def. Ex. 17-S, Part 8, -- Miscellaneous hardware for sawmill project -- \$72.70

Def. Ex. 17-S, Part 9, -- Pump, hose, and fittings -- \$1,410.78

A number of the claimed expenditures during the period from 1935 to 1951 were pro-rated amounts of disbursements made for the Consolidated Chippewa Agency, Minnesota. The Bois Forte Band's proportionate share of the same disbursements was claimed and disallowed as gratuitous offsets in the Docket 18-D claim. The evidence submitted in that case established that:

. . . . Over 90% of the expenditures was for the pay and expenses of Federal employees such as foresters, assistant foresters, guards, and towermen. Other sample vouchers reflect payment for tires and tubes for government owned vehicles, and purchase of vehicles. The articles purchased under this category and the employees listed on the payrolls were part of the agency or administrative service. [Boise Forte Band v. United States, 39 Ind. Cl. Comm. 300, 310.]

The claimed expenses for care and sale of timber are disallowed as gratuitous offsets.

48. Excess Treaty Payments -- \$22,512.63. Defendant claims credit for some \$22,512.63 expended as excess treaty payments as follows:

1. Agricultural implements and equipment; feed and care of livestock; hardware, glass, oils and paints -- \$3,212.94.

The General Accounting Office report lists all of the payments under these categories as having been made pursuant to the Treaty of September 30, 1854. The total sum of the listed items in these categories is \$63,212.94. There is no basis for determining which of the payments are to be considered "gratuitous." It is not possible to determine whether any of the excess payments were a tribal benefit. And it cannot be ascertained whether the claimed gratuitous disbursements were for purposes within any of the precluded categories such as agency, administrative, educational, health or highway purposes. All the claimed payments in this category are disallowed as gratuitous offsets.

2. Cash annuity -- \$878.60

Defendant has established that cash annuity payments under the 1854 Treaty totalled \$100,878.60. Since Article 4 provided for a total of \$100,000.00 in cash annuity payments, that sum is allowed as a payment on the claim. The excess amount of \$878.60 was gratuitously expended for the benefit of the Lake Superior Chippewas. It is allowed as a gratuitous offset.

3. Clothing -- \$14,739.02

Under this category the General Accounting Office report lists disbursements of \$15,739.02--all made pursuant to the Treaty of

September 30, 1854. Of this sum \$1,000.00 was claimed as a payment on the claim (finding 29-8, supra). There are no representative vouchers in support of this claim.^{9/} There is no basis for determining whether any of the excess payments were for purposes within any of the precluded categories such as agency, administrative, educational or health purposes. The claimed disbursements for clothing are disallowed as gratuitous offsets.

4. Guns, ammunition and traps -- \$3,682.07

In our finding 29-7 we determined that the full amount of \$8,148.07 expended under this category was disbursed in fulfillment of 1854 Treaty obligations. Therefore, there is no excess payment to be considered as a gratuitous offset.

49. Gratuitous Items and Services Not Required by the Treaty -- \$30,826.78. Defendant claims the following expenditures for items not required by Article 4 of the 1854 Treaty:

Agricultural aid	\$12,477.90
Fish nets and gilling twine	3,942.14
Provisions and other rations	11,474.96
Sawmill	<u>2,931.78</u>
Total	\$30,826.78

^{9/} The representative vouchers relating to disbursements for clothing are Def. Ex. 16-S. All of those items relate to the gratuitous offset claim for clothing of \$13,776.39, which is a different claim and the subject of our finding 36, supra.

The General Accounting Office reports that all of the disbursements were made pursuant to the Treaty of September 30, 1854. No representative vouchers have been submitted for any of the items in this category. There is no basis for determining whether any of the payments were for purposes within any of the precluded categories such as agency, administrative, educational or health purposes. All the claimed disbursements under this category are disallowed as gratuitous offsets.

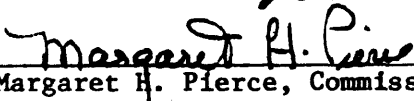
50. Conclusion -- Gratuitous Offsets. Defendant is entitled to the following gratuitous offsets:

Clearing, breaking and fencing land	\$ 00.00
Wells and well equipment	159.65
Seeds, fruit trees and fertilizer	00.00
Agricultural implements and equipment	2,914.99
Odanah project	00.00
Clothing	00.00
Hardware, glass, oils, and paint	00.00
Household equipment and supplies	00.00
Hunting and fishing equipment	00.00
Purchase of land	54,347.80
Feed and care of livestock	00.00
Purchase of livestock	00.00
Provisions	00.00
Repairs to dock	1,600.00
Enlargement of Red Cliff Reservation	14,128.81
Care and sale of timber	00.00
Excess treaty payments	878.60
Gratuitous items and services not required by treaty	<u>00.00</u>
Total	\$74,029.85

51. Final Award. Defendant is entitled to offset the sum of \$554,795.57, as payments on the claim, and the sum of \$74,029.85, as gratuitous offsets--making a total amount of \$628,825.42. Deducting this amount from the interlocutory award of \$3,250,000 leaves a net amount of \$2,621,174.58. The Chippewas of Lake Superior are entitled to a final award in the amount of \$2,621,174.58.


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner