

## BEFORE THE INDIAN CLAIMS COMMISSION

THE BOIS FORTE BAND, PETER SMITH,	)	
CALVIN KADUB, WILLIAM JOHNSON,	)	
and LAWRENCE A. CONNOR,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 18-D
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: January 28, 1977

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings of fact 1 through 11 previously entered herein, 21 Ind. Cl. Comm. 254 (1969), and findings of fact numbered 12 through 31, previously entered herein, 34 Ind. Cl. Comm. 157 (1974).

32. Consideration Promised

The promised consideration under the Treaty of April 7, 1866 (14 Stat. 765), totalled \$318,200.00.<sup>1/</sup> The pertinent provisions are contained in Articles 3 and 4 of the treaty as follows:

ARTICLE 3. In consideration of the foregoing cession and relinquishment, the United States agree to and will perform the stipulations, undertakings, and agreements following, that is to say:--

1st. There shall be set apart within one year after the date of the ratification of this treaty, under the direction of the President of the United States, within the Chippewa country, for the perpetual use and occupancy of said Bois Forte band of Chippewas, a tract of land of not less than one hundred thousand acres, the said location to include a lake known by the name

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<sup>1/</sup> Commission finding 30, entered on June 13, 1974, listed the total consideration promised as \$338,200.00. This error arose from the incorrect listing of the Article 4 consideration as \$50,000 instead of \$30,000. An amendment to the 1866 Treaty, agreed to by the Bois Forte Band on April 28, 1866, reduced the Article 4 consideration from \$50,000.00 to \$30,000.00.

of Netor As-sab-a-co-na, if, upon examination of the country by the agent sent by the President of the United States to select the said reservation, it is found practicable to include the said lake therein, and also one township of land on the Grand Fork River, at the mouth of Deer Creek, if such location shall be found practicable.

2d. The United States will, as soon as practicable after the setting apart of the tract of country first above mentioned, erect thereon, without expense to said Indians, one blacksmith's shop, to cost not exceeding five hundred dollars; one school-house, to cost not exceeding five hundred dollars; and eight houses for their chiefs, to cost not exceeding four hundred dollars each; and a building for an agency house and store-house for the storage of goods and provisions, to cost not exceeding two thousand dollars.

3d. The United States will expend annually for and in behalf of said Bois Forte band of Chippewas, for and during the term of twenty years from and after the ratification of this treaty, the several sums and for the purposes following, to wit: For the support of one blacksmith and assistant, and for tools, iron, and steel, and other articles necessary for the blacksmith's shop, fifteen hundred dollars; for one school-teacher, and the necessary books and stationery for the school, eight hundred dollars, the chiefs in council to have the privilege of selecting, with the approval of the Secretary of the Interior, the religious denomination to which the said teacher shall belong; for instructions of the said Indians in farming, and the purchase of seeds, tools &c., for that purpose, eight hundred dollars; and for annuity payments, the sum of eleven thousand dollars, three thousand five hundred dollars of which shall be paid to them in money per capita, one thousand dollars in provisions, ammunition, and tobacco, and six thousand five hundred dollars to be distributed to them in goods and other articles suited to their wants and condition.

ARTICLE 4. To enable the chiefs, head-men, and warriors now present to establish their people upon the new reservation, and to purchase useful articles and presents, for their people, the United States agree to pay them, upon the ratification of this treaty, the sum of thirty thousand dollars, to be expended under the direction of the Secretary of the Interior.

33. Disbursements Claimed by Defendant as Payments on the Claim

In fulfillment of the obligations assumed under the 1866 Treaty defendant asserts that the Congress appropriated a total sum of \$343,938.41, of which \$334,559.16 was disbursed during the treaty period from 1866 through 1887. In its supplemental exhibit 2A defendant lists additional disbursements through 1895 which increase the total payments to \$349,603.00.

34. Article 3 (2d) of the 1866 Treaty

Article 3 (2d) provided for the expenditure of not to exceed \$6,200.00 for the construction of buildings on the Bois Forte Reservation, as follows:

1 blacksmith shop - not to exceed	\$ 500
1 schoolhouse - not to exceed	500
8 houses for chiefs - not to exceed	3,200
Agency house and storehouse - not to exceed	<u>2,000</u>
Total	\$6,200

During the period from fiscal year 1867 through fiscal year 1895 the defendant has listed disbursements which total:

Blacksmith shop - erection and repairs	\$ 870.00
Education - erection and repairs of buildings	2,525.75
House for chiefs	2,523.50

(G.A.O. Report, January 12, 1951,  
Def. Ex. C-1, p. 27)

However, the 1871 report of the Commissioner of Indian Affairs contains a letter report of Indian Agent S. N. Clark, dated November 1, 1871, in which he stated that the blacksmith shop, school house, and eight houses for chiefs had been erected on the west shore of Pelican Lake -- a location which was several miles east of the eastern boundary of the Bois Forte Indian Reservation which, pursuant to the 1866 Treaty, had been established at Nett Lake.

Agent Clark's report recited that, "All these buildings I found deserted; the first because the teacher had never been there. . . . The blacksmith shop at Pelican Lake had never been used. The houses were unoccupied because [they were] surrounded by heavy forests." Report of the Commissioner of Indian Affairs to the Secretary of the Interior for 1871, Plaintiffs' Ex. E, p. 598. Since the buildings were not constructed on the Bois Forte Reservation, as required by Article 3 (2d) of the 1866 Treaty, and were not used by the Bois Forte Indians, none of the claimed disbursements under this article can be allowed as payment of the promised consideration.

35. Article 3 (3d) of the 1866 Treaty

Article 3 (3d) promised to pay or expend \$14,100.00 per year for 20 years or a total of \$282,000.00. The annual payments were to be:

One blacksmith and assistant and for tools, iron, and steel, and other blacksmith articles	\$1,500
One school teacher and the necessary books and stationery	800
Instruction in farming and the purchase of seeds, tools, etc.	800
Cash payments per capita	3,500
Provisions, ammunition, and tobacco	1,000
Goods and other articles	6,500

The 1871 report from the Indian Agent Clark recited that the teacher had never been to the Bois Forte Indian Reservation. In the 1874 report Indian Agent Mahan reported that the Bois Forte Reservation was so isolated and within a district so difficult of access that it seemed impossible to do anything more than pay them their cash annuities. He therefore had stationed

the three employees intended for the Bois Forte (blacksmith, farmer, and teacher) at Vermillion Lake, which was some 40 miles east of the Bois Forte Reservation. In 1876 it was also reported that the employees were established at Vermillion Lake. In fact it was not until the 1896 report of the Commissioner of Indian Affairs that any of the stipulated employees were at the Bois Forte Reservation. This was some 10 years after the 20-year period during which the annuity payments were to have been made. In that 1896 report Acting Indian Agent Mercer wrote that "The farmer and teacher are now established at Nett Lake on the reservation proper. . . . For the benefit of the Indians [Bois Forte] residing at Nett Lake Reservation I established on the reservation, under authority of your office, a day school, which is in successful operation and which is doing much good, it being the first educational facilities ever afforded the Indians of Nett Lake." Plaintiffs' Ex. W, pp. 326, 327. Since the United States did not, during the twenty year annuity payment period, provide the blacksmithing, teaching, and farming employees and articles at the Bois Forte Reservation, we find that none of the claimed disbursements for these purposes are allowable as payment of the promised consideration.

By Act of October 27, 1974, 88 Stat. 1499, section 2 of the Indian Claims Commission Act, 60 Stat. 1050, was amended to provide that expenditures for food, rations, or provisions shall not be deemed payments on the claim. The listed payments for provisions, ammunition, and tobacco and for goods and other articles would have included expenditures for food, rations, or provisions and such payments cannot be allowed as payments on the claim.

The defendant has listed a total of \$69,861.35 as cash disbursements to Bois Forte Indians. This sum is allowed as disbursement of the promised consideration of per capita cash payments and will be offset as a payment on the claim.

36. Article 4 of the 1866 Treaty

Under this article the United States promised to pay \$30,000.00 to the chiefs, head-men, and warriors to assist in establishing the Bois Forte Indians on their new reservation and to purchase useful articles and presents for the Indians. In fulfilling this provision of the treaty defendant paid the chiefs etc. \$6,330.00 and spent \$22,969.42 for "presents and useful articles." The Commission finds the \$6,330.00 payment to have been made in fulfilling promised consideration under the treaty, and it will be offset as a payment on the claim.

There is no evidence to establish that the \$22,969.42 was not spent for articles which would be included in the precluded category of "food, rations, or provisions." Therefore, the disbursement of \$22,969.42 for presents and useful articles will not be allowed as an offset.

37. Payments on Claim

The defendant is allowed to offset as payments on the claim the following sums:

Article 2 (3d)	\$69,861.35
Article 4	<u>6,330.00</u>
Total	\$76,191.35

38. Defendant's Claimed Gratuitous Offsets

In its amended answer filed September 11, 1974, defendant claimed gratuitous offsets totalling \$44,690.55. However, its proposed findings of

fact reduced the claimed gratuities to a total sum of \$37,466.32. The gratuitous offsets are listed in five main categories set forth in a G.A.O. Report of September 26, 1963, Defendant's Ex. 31.

39. Gratuitous Expenditures Listed in G.A.O. Report Vol. I, Part II, Sec. A. - \$442.85

The defendant claims expenditures totalling \$442.85 made for the Bois Forte Indians alone. The payments were

1871	Expenses of Indian delegation	\$ 18.00
1877	Hunting and Fishing Equipment	77.88
1878	Provisions	86.75
1881	Provisions	156.00
	Clothing	104.22

The Indian delegation expenditure was for the board and lodging of 12 Bois Forte Indians while visiting the Lake Superior Indian Agency concerning their annuity. The November 1871 report of Indian Agent Clark from the Lake Superior Indian Agency stated that the Bois Forte Reservation had never been visited by an agent and that the annuity payments were made at Vermillion Lake. It appears likely that the Indians were required to visit the Lake Superior Agency because of the failure of the United States agents to visit the Bois Forte Reservation or to supply their reservation with the goods and services promised in the 1866 Treaty. In view of the reported circumstances of the Bois Forte Indians in 1871 the Commission finds that the payment of \$18.00 for a delegation to the Lake Superior Agency should not be allowed as an offset in this case.

The population figures for the Bois Forte Band were reported to have been 797 in 1878 and 664 in 1881. The disbursements in 1877, 1878, and 1881 were too small to support an inference that they constituted a tribal benefit, and they are disallowed.

40. Purchase of Land - \$10,806.37

The defendant claims that in 1948 and 1949 it gratuitously expended \$10,806.37 for the purchase of land for the Bois Forte Band. No copies of deeds or other evidence was presented to show that title to any of the purchased lands ever vested in the Bois Forte Band. In fact defendant's exhibit 5, relating to the land purchase, contains a copy of a letter of September 4, 1947, which forwarded to the Superintendent of the Consolidated Chippewa Agency an original deed for one 80 acre parcel. The letter recited that the conveyance was to the United States "in trust for the Minnesota Chippewa Tribe." Defendant's witness Lyle W. Chisholm also testified that the lands went to the Minnesota Chippewa Tribe. Defendant's exhibits 36 and 37 do not contain any indication that the Bois Forte Band became the owner of any of the purchased lands. This item is disallowed as an offset.

41. Disbursements through the Consolidated Chippewa Agency, G.A.O. Report Vol. I, Part II, Sec. O - \$15,015.42

Defendant claims credit for some \$15,015.42 expended during the period from fiscal year 1937 through 1950 by the Consolidated Chippewa Agency at Cass Lake, Minnesota. The Agency had jurisdiction over seven Chippewa reservations, plus "Purchased Lands." The \$15,015.42 represents the Bois Forte proportionate share of total expenditures made by the Agency during the period. The Bois Forte share has been computed on the percentage which its population bore to the population for all the reservations served by the Consolidated Chippewa Agency. That percentage was about 5%. The amounts and categories involved were:



a. Agricultural aid - \$11.40

This item, expended in 1943, is listed under a category "Clearing, Breaking and Fencing Land." The claim is too small to support an inference that this constituted a tribal benefit. It is disallowed.

b. Agricultural implements - \$14.75

In 1942 defendant expended \$258.78 for a set of harness and a saddle. The Bois Forte proportionate share would be \$14.75. However, there is no basis for dividing a harness and saddle among seven separate reservations. This item is not subject to a ratable apportionment, and it is disallowed.

c. Household equipment - \$17.29

This item represents the Bois Forte proportionate share of an expenditure of \$303.41 made in 1943. The representative vouchers indicate the purchase of congoleum rugs and china to be used as premiums by the Extension Division of the Agency. This item is too small to support an inference that the expenditures constituted a tribal benefit. It further appears that the payments were for educational purposes. This item is disallowed.

d. Pay of carpenters - \$184.87

In 1943 the Consolidated Chippewa Agency paid carpenter salaries totalling \$13,243.30. The claimed amount is 5.7% of the total. Carpenters were part of the agency or administrative service, and their pay is disallowed as a gratuitous offset.

e. Expenses, care and sale of timber - \$14,787.11

This represents what would be the Bois Forte proportionate share of \$335,224.04 expended during a period from 1935 through 1951. 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. Further, there is no basis for determining what amount was spent on timber owned by the Bois Forte Band as distinguished from timber on individually owned land or land owned by the United States. These expenditures under this category are disallowed.

42. Disbursements Through the La Pointe Agency, G.A.O. Report, Vol. II, Part III, Sec. R - \$7,764.98

During the period from fiscal year 1866 through 1909 the United States dispensed goods and services through the La Pointe Agency for various bands of Chippewa Indians. The agency, which was at various times located at Superior, Bayfield, and Ashland, Wisconsin, had jurisdiction over five bands in Wisconsin and two in Minnesota, including the Bois Forte. The \$7,764.98 claimed under this category represents the Bois Forte proportionate share (about 17%) of the total amount expended by the agency. The population of the Bois Forte Band varied during this period from a low of 664 in 1881 to a high of 1,088 in 1880. For most of the years the population figures were in the 700's. The expenditures were reported under eleven categories as follows:

a. Agricultural aid, seeds, fruit trees and fertilizer - \$14.99

b. Agricultural implements and equipment - \$490.28. The disbursements covered twelve years, and the Bois Forte share varied from \$14.75 to a high of \$67.61.

c. Clothing - \$146.25. The Bois Forte proportionate shares were:

1881 - \$10.85  
1885 - 78.16  
1886 - 57.24

d. Hardware, glass, oils and paints - \$230.13. The expenditures were made in six years, and the Bois Forte share ranged from \$29.84 to a high of \$155.34.

e. Household equipment and supplies - \$522.38. The expenditures were made in six years, and the Bois Forte share ranged from \$29.84 to a high of \$155.34.

f. Hunting and fishing equipment - \$106.80. The Bois Forte proportionate shares of the agency disbursements in this category were \$60.18 for 1885 and \$46.62 for 1886.

g. Indian dwellings - \$87.69. The allocation of expenditures in this category for the Bois Forte Indians was:

1885 -	\$38.19
1886 -	31.68
1901 -	17.82

h. Livestock - feed and care of - \$526.73. Allocations to the Bois Forte Band appear in 14 years ranging from a yearly low of \$15.05 to a high of \$74.39.

i. Livestock - purchase of - \$254.85. In 1881 the La Pointe Agency purchased 13 yoke of oxen. The Bois Forte proportionate share of this item was \$254.85.

j. Blacksmith shops - \$26.10

h. Provisions - \$5,307.99. Expenditures for provisions are listed in 33 years, and the Bois Forte proportionate share ranged from a low of \$18.77 in 1872 to a high of \$697.38 in 1882.

The yearly expenditures in the listed categories were too low to support an inference that they constituted a tribal benefit. During the early years of the period involved the Bois Forte Reservation was reported to have been virtually inaccessible. In 1874 it was described as being so isolated and within a district so difficult of access that it seemed impossible to do anything more than pay the Bois Forte their cash annuities. In 1882 the LaPointe Indian Agent reported "The Nett Lake Reservation, for which provision was made in the treaty, being inaccessible for the delivery of their [Bois Forte] supplies, a small reservation has been set apart for their use

upon Vermillion Lake" Report of the Commissioner of Indian Affairs to the Secretary of the Interior for 1882, Plaintiffs' Ex. M, p. 176. It is therefore unlikely that the Bois Forte Band ever received its proportionate share of the disbursements made by the LaPointe Agency. All of the items listed in this section are disallowed as gratuitous offsets.

43. Disbursements Through the LaPointe Agency, G.AO. Report, Vol. II, Part III, Sec. S - \$3,436.70

During the period from fiscal year 1866 through 1916 the LaPointe Agency disbursed goods and services from funds appropriated for the support of Chippewas of Lake Superior. The defendant claims that some \$3,436.70 should be offset as the Bois Forte Indians' proportionate share of those disbursements. The expenditures were reported under eight categories as follows:

a. Agricultural aid: seeds, fruit trees and fertilizer - \$99.24. The Bois Forte allocations were:

1878	-	\$48.30
1881	-	36.14
1890	-	14.80

b. Agricultural implements and equipment - \$90.46. The Bois Forte allocations were;

1899	-	\$37.90
1905		15.45
1906	-	37.11

c. Hardware, glass, oils and paint - \$384.20. The disbursements in this category were made in eight years with the Bois Forte proportionate share ranging from \$2.63 in 1881 to a high of \$120.31 in 1883.

d. Household equipment and supplies - \$77.14. The Bois Forte allocations were:

1881	-	\$11.76
1882	-	48.55
1899	-	16.83

e. Livestock - feed and care of - \$342.78. The expenditures in this category were made in seven years, and the yearly amounts allocated to the Bois Forte Indians ranged from \$17.02 to a high of \$67.08.

f. Blacksmith shops - \$76.63. Defendant has listed the Bois Forte apportionment as \$66.51 for 1881 <sup>2/</sup>and \$10.12 for 1884.

g. Miscellaneous building material - \$31.72.

h. Pay of blacksmiths - \$825.77.

i. Provisions - \$1,899.19. Expenditures for provisions are listed for 17 years with the Bois Forte proportionate share ranging from a low of \$11.63 in 1914 to a high of \$511.04 in 1883.

The yearly expenditures in the listed categories were too low to support an inference that they constituted a tribal benefit. Those listed disbursements made in the years after 1905 should not have been prorated to the Bois Forte Band since those Indians were no longer under the jurisdiction of the LaPointe Agency. During the early years of the period involved the inaccessibility of the Bois Forte Reservation made it unlikely that the Bois Forte Band ever received its proportionate share of the goods and services dispensed through the LaPointe Agency. The payments for salaries of blacksmiths were for services rendered as part of the administrative or agency service.

All of the claimed offsets in this section are disallowed.


#### 44. Conclusion

The defendant is not allowed to offset any gratuitous expenditures against the award to the plaintiffs in this case.

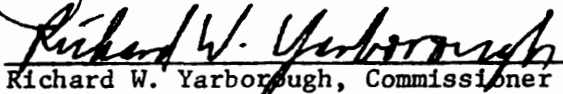
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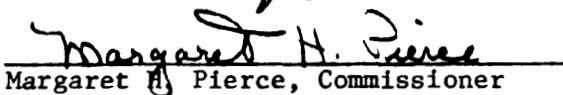
<sup>2/</sup> The \$66.51 appears to be a miscalculation. The amount expended by the LaPointe Agency is listed as \$93.58. Applying the Bois Forte percentage allocation (15.5%) produces a figure of \$14.30 for the Bois Forte proportionate share for 1881.

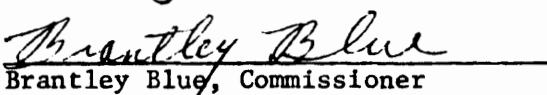
The defendant is allowed to offset the sum of \$76,191.35 as payment on the claim. This amount deducted from the fair market value of the lands involved (\$1,100,000.00) leaves a net sum of \$1,023,808.65. The Bois Forte Band of Chippewa Indians is entitled to recover \$1,023,808.65 in full satisfaction of all claims in Docket 18-D.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner