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Claims for Indian Supplies

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IN THE SENATE OF THE UNITED STATES.

MAY 21, 1888.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 1480.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1480) to authorize the Secretary of the Interior to pay interest on certain sums, etc., have considered the same and report as follows:

By the act of March 3, 1885, \$100,000, or so much thereof as was necessary, was appropriated by Congress to pay the claims of certain licensed traders for goods and supplies furnished by them to certain bands of Sioux Indians prior to the outbreak of 1862 in Minnesota. The examination of these claims under the authority of this act resulted in the payment—

To Mallie Turpin, assignee of Louis Roberts.....	\$14,100.00
To Nathan Myrick, assignee of S. B. Garries, heir and surviving partner of N. Myrick & Co.....	11,321.08
To Amand B. Forbes, executrix and widow of William Henry Forbes....	11,754.00
To I. and C. M. Dailey, assignees of B. F. Pratt.....	5,000.00
Total.....	42,175.08

These amounts have been paid, and this bill is presented asking for interest upon these amounts from the date when the supplies were furnished until the date of the payment of the principal as above stated.

Counsel for claimants in settling up this demand for interest take the position that this is not a demand against the Government. They frankly admit that in that event they could not expect the payment of interest, but they insist that in this case their claim is really against the Sioux Indians, and that the Government of the United States has in its hands a large amount of money which formerly belonged to them and which the Government ought now to use in the payment of the just debts of this tribe; and they further urge that as the Government has always insisted upon the payment of interest to its citizens by foreign governments upon just but delayed claims, that it should in this instance out of the funds of the Sioux Indians in its hands pay interest upon this debt for supplies.

In setting out the facts upon which they rest this case, they say that the Government of the United States had in its hands the sum of \$5,631,900 belonging to these Sioux Indians when the act of February 16, 1863, annulling all treaties with these Indians was passed, and that since that time, out of that sum, only \$1,913,657.72 has ever been paid to the Indians or for their benefit, and consequently that the sum of

\$3,718,242.08 of the funds of these people is still in the Treasury, and that out of this sum which the Government practically holds as a trustee they ought to be paid the amount of interest claimed.

If the alleged facts upon which counsel for claimants rest their cause as above stated are not sustained by the records, it would seem that their case must fall to the ground without further examination. In a letter dated March 24, 1888, the honorable Secretary of the Interior forwarded to the chairman of the Committee on Indian Affairs in the House of Representatives a letter of the honorable Commissioner of Indian Affairs bearing date of March 22, 1888, which we print with this report, and which gives quite a full and distinct statement of this whole matter, and from which it appears that under various treaties these Indians were to receive from July 1, 1852, for fifty years, annuities amounting to \$150,050 per annum; that twelve of these annual payments were made when they fell due, and that in consequence of the outbreak of 1862 the act of 1863 was passed, declaring all rights under these treaties forfeited, and of course stopping all further payments thereon.

Of course the total amount of money that would have been paid to these people by the Government during the thirty-eight years of the treaty period which had not expired would have been \$5,701,900, and this is the fund which counsel for claimants chose to consider as money of these Indians held by the Government. In the statement of the Commissioner of Indian Affairs above referred to, he states the amounts of money paid by the Government for the benefit of these Indians at not \$1,913,657.92 as stated by claimants, but at \$4,813,064.54. This sum would largely exceed the amount of money which would have accrued by this time under the treaties.

The Commissioner also, in this letter, states that a considerable number of these Indians, having remained loyal to the Government and rendered valuable service to the Government at the time of the outbreak of their brethren, that they should be relieved from the effects of the act of 1863, and their rights under the former treaties be restored. If this is done, and it seems to be reasonable and just that it should be, then the amounts of money to be restored to them will necessarily be taken into this account, and will swell the amounts expended by the Government for the benefit of these Indians.

But, aside from all this, we can not agree that the Government, by reason of its declaration of a forfeiture of all the rights of the Indians on account of their misconduct in 1862, thereby became liable for their debts, or became in any manner a trustee for the distribution of funds held by these Indians. The Indians had no money in the hands of the Government. It is true that they had a *right* to certain stipulated sums to be paid from time to time in the future, but this was dependent, of course, upon their performing their duty to the Government of the United States in the mean time. This they did not do and all their rights were forfeited. By their own misconduct they lost all right to those sums of money, and the Government was released from all obligation to pay. The great military expenses resulting from this misconduct should fairly be offset against any demands of these people also, as all this was the direct and unavoidable result of their misconduct.

The act of March 3, 1885, was passed because the Government agents had encouraged these traders to advance supplies, etc., to the Indians while waiting for the annual remittance, and the traders had thereby helped to postpone the outbreak, and the Government having subsequently declared forfeited the means of paying these bills it seemed but fair that these amounts should be paid by the Government itself; but

there is no reason why the Government should pay interest on this. It does not pay interest upon its own debts when no interest is stipulated.

Thus, from every view of this case, this committee believes that this bill should not pass, and so report.

DEPARTMENT OF THE INTERIOR,
Washington, March 24, 1888.

SIR: I have the honor to acknowledge the receipt of your communication of 15th ultimo, inclosing, with request for information, H. R. 6464, "For the relief of certain Indians who served in the armies of the United States against their own people when at war with the United States, and of their families and descendants, from the operation of certain acts of Congress passed to punish hostile Indians."

In response thereto, I transmit for your information a copy of a report of the 22d instant from the Commissioner of Indian Affairs, to whom the matter was referred, wherein he gives a brief history of the Sisseton, Wahpeton, Medawakanton, and Wahparoota bands of the Dakota Sioux Indians, whose treaties were abrogated, and the lands, annuities, and claims declared forfeited by the act of February 16, 1863 (12 Stat., 652), on account of the outbreak and massacre of whites in Minnesota, in the fall of 1862, by parties of said Indians; furnishes information of record showing the friendly attitude towards the whites and the good conduct at that time by parties of the Sisseton and Wahpeton bands, and the valuable services rendered by some of them in the service of the United States as scouts, etc.

The report presents a statement of annuities provided for under the abrogated treaties amounting to a total annual sum of \$150,050, of which \$15,000 was payable forever and the remainder for fifty years; that prior to the abrogation of the treaties twelve installments of the annuities had been paid, from 1851 to 1863, leaving thirty-eight installments payable on all annuities, except the \$15,000 payable forever, amounting in the aggregate for all, for the period of fifty years, to the sum of \$5,701,900; that since the abrogating act of 1863 there has been paid, under laws and a subsequent treaty, for and on account of all these bands of Sioux Indians, the total sum of \$4,813,064.54, leaving a balance of \$888,835.46; that there has been received, in addition to the foregoing, on account of the proceeds of sales of their lands in Minnesota and Dakota, the sum of \$889,081.90, of which \$811,845.11 has been expended for the benefit of the Santee Sioux and Sioux of Lake Traverse and Devil's Lake, leaving a balance to their credit of \$77,236.79.

The report further shows that the share of the Sisseton and Wahpeton bands in the \$150,050 annuity payment was \$73,600, all of which was limited to the period of fifty years; that twenty-five installments from 1863 to 1888 would amount to \$1,840,000, from which should be deducted the total amount expended for or on account of said two bands since 1863, \$616,086.52, leaving a balance of \$1,223,913.48. That the scouts and their families of the Sisseton and Wahpeton bands constitute one-fourth of the number of those Indians, and that therefore their proportion of the last-named sum would be \$305,978.37, and for their benefit he recommends an appropriation of that sum in a bill which he has prepared, and which is herewith submitted as a substitute for House bill 6464, stating that the second section of the latter bill is impossible of execution, as no accounts with the individual Indians have been or are kept.

The bill recommended by the Commissioner as a substitute for the House bill 6464 contains a provision for the annual appropriation of \$18,400 for the period of thirteen years from July 1, 1889, as the share of the annuities of the Indians for whose benefit this legislation is proposed, to which they would be entitled had their treaties not been abrogated.

Very respectfully,

WM. F. VILAS,
Secretary.

CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 22, 1888.

SIR: By your reference of the 16th ultimo, for report, I have the honor to be in receipt of a communication from the chairman of the House Committee on Indian Affairs, inclosing House bill 6464 "for the relief of certain Indians who served in the armies

of the United States against their own people when at war with the United States, and of their families and descendants, from the operations of certain acts of Congress passed to punish the hostile Indians."

The bill enacts that the provisions of the act of Congress entitled "An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians, approved February 16, 1863," shall not extend to any individual Indians of the said Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of the Dakota or Sioux Indians who, in the war following the outbreak of said bands in August, 1862, enrolled themselves and entered into the military service of the United States as scouts, and as such served against said hostile Indians thereafter in said war, under the direction and command of Brig. Gen. Henry H. Sibley or other commanding officers of the United States forces in the district of Minnesota during said war, and that the Secretary of the Interior be, and hereby is, authorized and directed to carry into effect as to the Indians who so enrolled and served as scouts, together with the members of their respective families who remained friendly to the whites and within the lines of the Federal Army, all the provisions of the treaties of July 25, 1851, and August 5, 1851, and June 9, 1858, in the same manner and to the same extent as if the act of February 16, 1863, had never been passed.

Section 2 provides that, in settling the accounts under said treaties with said individual Indians, there shall be deducted from the aggregate amount found due them, respectively, all such sums as may have been paid over to such Indian or Indians on any account whatever by the United States, except on account of actual services rendered to the United States between the 16th day of February, 1863, and the date to which said account is stated

In order to understand the object of the legislation proposed by this bill it is necessary that a brief history of the four bands named, and of the sums guaranteed to them under their several treaties, should be detailed for the information of the Department and the House Committee on Indian Affairs.

Under treaty of September 29, 1837 (7 Stats., 539), with said Indians, the sum of \$300,000 was set aside to draw interest at 5 per cent. per annum, yielding an interest annually forever of.....	\$15,000
By treaty of July 23, 1851 (10 Stats., 949), with the Sisseton and Wahpeton bands, as a consideration for the cession of lands, a trust fund was created, amounting to \$1,360,000, yielding an interest of 5 per cent. per annum for fifty years.....	68,000
By the Indian appropriation act of August 30, 1852 (10 Stats., 52), in accordance with the Senate amendment to said treaty, the sum of \$112,000 was added to said trust fund, yielding an annual interest of.....	5,600
By treaty with the Medawakanton and Wahpakoota bands of Sioux, dated August 5, 1851 (10 Stats., 954), as a consideration for cession of lands, a trust fund was created amounting to \$11,600,000, yielding an annual interest of (to be paid for 50 years).....	58,000
By the Indian appropriation act of August 30, 1852 (10 Stats., 52), in accordance with Senate amendment to said treaty, the sum of \$69,000 was added to said trust fund, yielding an annual interest of.....	3,450
Total annuity.....	150,050

Owing to the outbreak and massacre in Minnesota in the fall of 1862 Congress, by act approved February 16, 1863 (12 Stats., 652), declared all treaties with said bands abrogated, all lands in Minnesota, annuities, and claims forfeited, and provided for a commission to ascertain and report upon claims for losses, and authority was given to the Interior Department to set apart 80 acres of land to such Indians as had exerted themselves to save captive whites. By the act of March 3, 1863 (12 Stats., 819), it was provided that a tract of good agricultural land should be set apart, outside of the limits of any State, sufficient for 80 acres to each member of the four bands who were willing to adopt the pursuits of agriculture; that their former reservation should be surveyed and sold, and the proceeds invested by the Indian Department for the benefit of said Indians, and that Indians who had exerted themselves to save the lives of whites should each have 80 acres of land on which the improvements were situated.

Under the provisions of this act of Congress the four bands named were removed from Minnesota and are now located at the Santee Agency, Nebr., and at the Sisseton and Devil's Lake Agencies, in Dakota.

On the 19th day of February, 1867 (Stats. 15, p. 505), a treaty was entered into with the Sisseton and Wahpeton bands of Sioux Indians, which recites as follows:

"Whereas it is understood that a portion of the Sisseton and Wahpeton bands of Santee Sioux Indians, numbering from 1,200 to 1,500 persons, not only preserved their obligations to the Government of the United States during and since the outbreak of the Medawakanton and other bands of Sioux, in 1862, but freely periled their lives

during the outbreak to rescue the residents on the Sioux Reservation and to obtain possession of white women and children made captives by the hostile bands, and that another portion of said Sisseton and Wahpeton bands, numbering from 1,000 to 1,200 persons, who did not participate in the massacre of the whites in 1862, fearing the indiscriminate vengeance of the whites, fled to the great prairies of the Northwest, where they still remain; and

"Whereas Congress, in confiscating the Sioux annuities and reservations, made no provision for the support of these, the friendly portion of the Sisseton and Wahpeton bands," etc.; and

"Whereas the several subdivisions of the friendly Sisseton and Wahpeton bands ask, through their representatives, that their adherence to their former obligations of friendship to the Government and people of the United States be recognized, and that provision be made to enable them to return to an agricultural life, etc.: Therefore, a treaty has been entered into at Washington City, this 19th day of February, 1867," etc.

Under article 2 of this treaty the said bands cede to the United States the right to construct wagon roads, railroads, mail stations, etc., over and across the lands claimed by said bands, including their reservation thereafter designated.

Under articles 3 and 5: For and in consideration of the cession above mentioned, and in consideration of the faithful and important services said to have been rendered by the said bands, also in consideration of the confiscation of all their annuities, etc., a tract of land was set aside for a permanent reservation, beginning at the head of Lake Traverse, etc., to be apportioned in tracts of 160 acres to each head of a family.

Under amended article 6: In consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time, make such appropriations as may be deemed requisite to enable said Indians to return to an agricultural life, to establish and support local and manual labor schools, to employ mechanical and other teachers, and to improve farms, etc.

Under this article of the treaty there has been appropriated for these bands the sum of \$467,457.25.

As hereinbefore stated, these bands were to receive annually for fifty years the sum of \$150,050. At the time of the outbreak in 1862, twelve installments of an annuity had been appropriated, leaving unappropriated thirty-eight installments of \$150,050, aggregating the sum of.....\$5,701,900.00

Since the date of the act of February 16, 1863, the following sums have been appropriated for the support of these bands and to pay for damages to citizens, etc.:

12 Stats., 652. For damages	\$100,000.00
12 Stats., 784. For removal, etc.	50,016.66
13 Stats., 172. For deficiencies, etc.	113,043.40
13 Stats., 92. Award for damages	928,411.00
13 Stats., 92. Award for damages	241,963.00
13 Stats., 427. For award to Indians	7,500.00
13 Stats., 180. For support	100,000.00
13 Stats., 559. For support	100,000.00
14 Stats., 279. For support	100,000.00
14 Stats., 514. For support	100,000.00

Under treaty of 1867:

15 Stats., 217. For support (D. L.)	15,000.00
15 Stats., 217. For support (L. T.)	30,000.00
15 Stats., 217. For support (L. T.)	7,457.25
15 Stats., 221. For support (L. T.)	50,000.00
15 Stats., 315. For support, both bands	60,000.00
16 Stats., 26. For survey of reservation	45,000.00
16 Stats., 88. For support	10,000.00
16 Stats., 353. For support	50,000.00
16 Stats., 354. For support	50,000.00
16 Stats., 563. For support	75,000.00
17 Stats., 183. For support	75,000.00

2,308,391.31

18 Stats., 167. Add amount paid to Sisseton and Wahpeton and Santee Sioux of Lake Traverse and Devil's Lake, under agreement made by commissioners appointed under the act of June 7, 1872, with said bands for the relinquishment of their claim to or interest in land described in second article of treaty of February 19, 1867	800,000.00
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15 Stats., 635. Add amount paid to the Santee Sioux Indians of the four bands named, under treaty with the different tribes of Sioux, dated April 29, 1868, for twenty years, say \$75,000 per annum (which, under article 10, is in lieu of all annuities under former treaties).	\$1,500,000.00
18 Stats., 47. Add amount appropriated to pay creditors of said bands, by act approved May 16, 1874.	70,000.00
19 Stats., 549. Add amount appropriated for relief of Hans C. Peterson, by act approved March 3, 1877.	2,283.92
23 Stats., 344. Add amount expended of the sum of \$100,000 appropriated by act approved March 3, 1885, to pay creditors of said Indians prior to the massacre of 1862.	42,991.50
	4,723,666.73
Add amounts expended for support of said bands at Sisseton and Devil's Lake for the fiscal year 1884.	15,934.60
The fiscal year—	
1885	15,933.86
1886	15,588.22
1887	11,717.63
1888	12,000.00
For the Medawakanton band in Minnesota, fiscal year 1885	9,442.50
For the same band, for 1887.	8,781.00
	\$4,813,064.54
Balance	888,835.46

In addition to the aggregate sum of \$4,813,064.54, expended as shown above, there has been received from the sale of their lands in Minnesota and Dakota the sum of \$889,081.90, of which amount the sum of \$811,845.11 has been expended for the benefit of the Santee Sioux and Sioux of Lake Traverse and Devil's Lake, leaving a balance to their credit of \$77,236.79.

In stating the foregoing account, under bill 6464, this office dealt with the four bands mentioned in said bill, in common, but it is claimed that relief is only sought for those members of the Sisseton and Wahpeton bands, their families and descendants, who enlisted as scouts in the U. S. Army (none of the other bands did so enlist), and who were under treaty entitled to an annual sum of \$73,600 for fifty years, of which twelve installments had been appropriated, leaving thirty-eight installments due when the act of confiscation of February 16, 1863, was passed. Of the different amounts appropriated in the foregoing statements, the scouts claim only their share of the \$467,457.25 appropriated under article 6 of the treaty of February 19, 1867, should be charged against them, as the other charges were for payment of damages arising from the massacre in 1862, and for feeding the Indians after the confiscation of their annuities, and while the scouts and families were at Fort Wadsworth in the employ of the Government. This office, however, is of the opinion that they should be charged, in addition to their share of the \$467,457.25, with their share of the \$70,000 appropriated May 16, 1874 (Stat. 18, page 47), and of the \$42,991.50 used from the \$100,000 appropriated March 3, 1885 (Stat. 24, page 345), as these amounts were used to pay debts prior to the massacre. They should also be charged with their share of the amounts appropriated by Congress as a gift from 1884 to 1888, inclusive, amounting to \$35,637.77, making total amount to be charged against the Sisseton and Wahpeton band of \$616,086.52.

The bill as submitted provides in section 2 "That, in stating the accounts under said treaties with said individual Indians, there shall be deducted from the aggregate amount found due them respectively all such sums as may have been paid over to such Indian or Indians on any account whatever by the United States, except on account of actual services rendered to the United States between the 16th day of February, 1863, and the date to which said account is stated."

This provision is impossible of execution, as no accounts with individual Indians are kept or can be kept, and I have prepared an amended bill, as will hereafter appear.

In reference to the foregoing account of moneys paid to and on account of the several bands of Sioux mentioned in the proposed bill (H. R. 6464), I can not refrain from saying that, in my estimation, legislation based upon it would, perhaps, perpetuate and make irremediable a great wrong which has been perpetuated upon the Sisseton and Wahpeton bands, who have been unfortunately and cruelly classed with the other named bands, the Medawakanton and Wahpakoota.

To make this clear the following statement of facts seem necessary:

At the time of the outbreak of the Lower Sioux, composed of the two bands last

named, in Minnesota, in 1862, the first-named two bands, called also the Upper Sioux, were living on separate reservations, lying partly in Minnesota and partly in Dakota, secured to them by separate treaties, under which they were entitled to an annuity of \$73,600 for fifty years, beginning July 1, 1852. Twelve installments had been appropriated, when, in 1862, the other bands organized an outbreak and massacre of white settlers in the vicinity of the reservation occupied by the friendly Sissetons and Wabpetons.

By act of Congress, February 16, 1863, in which the outraged feelings of the country, as well as its indiscriminating wrath, found expression, all treaties with the four bands were abrogated, their lands in Minnesota and their funds were confiscated, although part of the Sisseton and Wabpeton bands remained loyal and enlisted in the Army.

In 1867 the Government, having been convinced that a great wrong had been done in the case of the Sisseton and Wabpeton bands, who not only had refrained from hostilities, but had periled their lives in defense of the whites and in delivering a large number of captive women and children who had been captured by the hostiles, appointed a commission to treat with these bands. This treaty, concluded February 19, 1867, in its preamble recites the fact that the act of February 16, 1863, had wronged these bands, and the third article, "for and in consideration of the faithful services said to have been rendered by them," and "in consideration of the confiscation of their annuities, reservations, and improvements," sets apart for the scouts and their families the Traverse Lake Reservation; and the fourth article, for the others who fled from the hostiles to the north, the reservation of Devil's Lake. This has been held to be in full satisfaction for the wrong done these Indians, and is cited as an estoppel, and admission on their part that full compensation has been received by them. But what did we give them by this treaty as a reward for their faithful services in which they have imperiled their lives; and in compensation for their annuities which were confiscated; and for their crops, which our troops consumed, valued at \$120,000; and for their valuable lands in Minnesota, from which they were driven; and for the right of way for roads through their lands in Dakota, which they ceded to us? What was the valuable consideration given to which we refer as compensation for all their loss and wrong? Simply the reservations in Dakota on which they live, which were theirs already. It will be seen from the statement submitted herewith that they have received more than they would have been entitled to receive under the abrogated treaty of 1851. But a glance at the items composing the accounts discloses the fact that this is because these bands are charged with support given the hostile bands and with damages inflicted by them. It is necessary to remember that a few of the hostile bands joined the friendly ones and furnished scouts who served with the others, and the purpose of the bill doubtless is to compensate these as well as the others. By thus mentioning them with the others, these others are held responsible for all that has been paid to and on account of the hostile bands.

It would be impossible at this late day to separate their accounts, but I think the following proposition will satisfy those for whose benefit legislation is sought.

Let us agree to class all these bands as hostile at the time of the outbreak; concede that their lands and funds were justly confiscated; but those who were in the service in the Army as scouts, as appears from the records of the War Department, should be classed as our friends, and should be exempted from the act of confiscation. If we multiply the amount of their annuities (\$73,600) by the number of years that have elapsed (twenty-five), we have the gross sum of \$1,840,000. From this subtract the amount which has been appropriated for the whole number after the confiscation act, amounting to \$616,086.52, which leaves \$1,223,913.48. The scouts and their families constitute one-fourth of those who would have received this, and their share, therefore, would be \$305,978.37.

I recommend that a bill be passed appropriating this sum of money, to be paid to those whose names appear on the rolls of the Army as scouts, their families and descendants, or their legal representatives; and that these bands be relieved from the stigma which has been unjustly put upon them as being hostile because a few of their young men joined the hostiles, and that they shall be so far restored to their rights under the treaties and agreements which were abrogated that they shall receive during the remaining thirteen years during which they are entitled to it the full one-fourth of the amount of their annuities.

I inclose a draught of a bill, which I recommend be submitted for House bill No. 6464, referred for report, and return also letter from Committee on Indian Affairs, House of Representatives, with accompanying papers.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.