

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket Nos. 69, 299, and 353
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 25, 1973

Appearances:

Harold E. Mott, Attorney for the
Plaintiff,

Dean K. Dunsmore, Edwin B. Hatch and
William F. Smith, with whom was Shiro
Kashiwa, Assistant Attorney General,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

These three dockets are before the Commission on the motions of the plaintiff in each docket, the Navajo Tribe of Indians, for a partial summary judgment and for a complete accounting of plaintiff's funds; and for a determination of an issue of law relating to the payment of interest at 5 percent per annum on funds held in plaintiff's accounts involving "Indian Moneys, Proceeds of Labor."

Plaintiff's accounting claim in Docket 69 was originally raised in the fifth and seventh claims of the petition filed by plaintiff on July 11, 1950. Plaintiff in its fifth claim alleged that defendant had "tolerated and allowed certain persons" to remove plaintiff's natural resources, whereby such resources were then sold for an inadequate

consideration and less than the true market value; and that the natural resources included crude oil and natural gas, coal, timber, vanadium, uranium and other ores, as well as stone, sand and gravel. Plaintiff in its seventh claim complained in general terms of the "improper or wrongful use or expenditure" by defendant of plaintiff's trust funds.

Plaintiff's petition in Docket 299 complained in terms similar to the fifth claim in Docket 69 about defendant's actions concerning plaintiff's natural resources; and specifically requested an accounting as to the resources listed above, less crude oil and natural gas.

Plaintiff's petition in Docket No. 353 complained of the royalties negotiated and collected concerning oil and gas fields within the "Navajo Reservation in Arizona and New Mexico," and requested an accounting of "crude oil, gas and natural-gas gasoline" leases.

In response to plaintiff's petition, the General Accounting Office prepared and submitted a four volume accounting report dated March 9, 1961, and marked it "Trust Funds, Indian Claims Commission No. 69."

Plaintiff filed an amended petition in Docket 69 on October 1, 1969, withdrawing its fifth claim, concerning natural resources, and all other claims except the seventh claim, described above (dealing with improper or wrongful use of plaintiff's trust funds).

On the basis of the record, it would appear that when plaintiff originally filed its respective petitions in Docket Nos. 69, 299, and 353, it may have anticipated three distinct accounting reports, although plaintiff's allegations in Docket Nos. 299 and 353 clearly overlapped

those filed in Docket No. 69. In any case, defendant responded with an accounting report in Docket No. 69 which covered plaintiff's accounting requests in all three dockets.

Subsequently, on March 18, 1970, plaintiff filed simultaneously for Docket Nos. 69, 299 and 353, separate exceptions to the accounting report.

In these circumstances, consolidation of Docket Nos. 299 and 353 with Docket No. 69 is appropriate. This opinion will deal with the motions for summary judgment and a full accounting in all three dockets, and we will issue an order consolidating these dockets for all future proceedings.

I. Docket No. 69

This docket is before the Commission on plaintiff's motion for partial summary judgment and for a complete accounting filed on January 2, 1971. Defendant filed a response to plaintiff's motion on March 10, 1971.

Defendant's four volume accounting report deals with plaintiff's trust funds, and shows revenues collected and disbursements made for plaintiff during the period March 3, 1883, to June 30, 1951. Revenues and disbursements were reported separately under the two categories of "Indian Moneys, Proceeds of Labor" (IMPL) funds, and tribal organization funds.^{1/} The report shows total revenues of \$12,363,364.95, and total disbursements of \$8,347,552.95.

^{1/} The statements concerning the tribal organization funds cover the period June 26, 1937, to December 31, 1950.

Plaintiff filed exceptions to the report on March 18, 1970. On July 6, 1970, plaintiff filed amendments to those exceptions. Defendant responded to plaintiff's exceptions and amendments on December 31, 1970.

Plaintiff's motion for partial summary judgment and complete accounting lists eight exceptions to the accounting report, denominated (a) through (h). Exceptions (a) and (b) were the original exceptions that were filed March 18, 1970. Exceptions (c) through (g) were originally denominated 1 through 5 in the amendment to the exceptions filed on July 6, 1970. Exception (h) was presented for the first time in the present motion.

Plaintiff's motion is cast in terms of a request for summary judgment as to the first seven items, and a request for a complete accounting as to the eighth item. However, an examination of the motion shows that as to the first five items (a) through (e), what is in fact requested is a fuller accounting. We shall therefore treat the motion as a request for a fuller accounting as to items (a) through (e). Exceptions (a) and (b).

Exceptions (a) and (b) deal respectively with tribal organization fund disbursements and revenues. Plaintiff claims that certain disbursements and receipts are "unexplained and unaccounted for," and that the trustee has a duty to show, in detail, items expended and received, when, to whom, and for what purpose, so that the cestui can make a

reasonable test of the accuracy of the trustee's claim. Plaintiff requests that such data be supplied.

Defendant responds that the vouchers, receipts or other records are not a part of the GAO records, and that if such data are still in existence, they should be available to plaintiff, for the tribe had a treasurer or bookkeeper handling trust funds and tribal records. Defendant argues that plaintiff has made no showing in its exceptions or otherwise that the records are still in existence, or that they are not available to the tribe. Defendant maintains that the records are thus as much available to plaintiff as to defendant, and complains that plaintiff nevertheless seeks to compel defendant to continue to search for records of which defendant "has not had custody".

Plaintiff states in exception (a) that the GAO report shows total disbursements of \$8,347,552.95, and that while the report furnished a detailed accounting of IMPL fund disbursements in the sum of \$1,921,448.98, the remaining disbursements, of tribal organization funds in the sum of \$6,426,102.97, are "unexplained and unaccounted for".

The disbursements of this \$6,426,103.97 are shown in the accounting report in Volume IV by single line entries, without elaboration or explanation. For example, Statement No. 66 (page 925) reports the "Livestock Disposition" fund, and shows "Disbursements - \$1,046,763.81", and Statement No. 81 (page 944) reports the "Sawmill Project" fund, and shows "Disbursements - \$3,641,536.48".

The report states that "the disbursements made from these funds were not shown by years and allocations for the reason that the vouchers are not a part of the records of this office." (Volume IV, page 877.)

Thus, information concerning dates, amounts or purposes of disbursements for \$6,426,102.97 of tribal organization funds are not included in the accounting report.

Plaintiff states in exception (b) that of the total tribal organization fund revenue of \$6,448,494.40, the GAO report provides adequate detailed information as to only \$432,797.07, arising from sales of lumber. (This information is provided in Volume IV, Part IV, Sections B and C.) As to the remaining \$6,015,697.33 in revenues, plaintiff complains that the report fails to include basic information as to quantity, size, grade and unit selling prices of the revenue sources.

The sources of the allegedly unaccounted for revenues in the total of \$6,015,697.33 is shown in the accounting report in Volume IV by single entries, otherwise unexplained. To use Statement No. 81 (at page 945) as an example again, that fund shows revenue of \$3,648,326.93 from "Sale of lumber (No detailed information shown)."

Thus, information concerning dates, amounts or sources of revenues for \$6,015,697.33 of tribal organization funds are not included in the accounting report.

The Commission has previously determined that the burden of furnishing data as a basis for determining whether management of tribal funds was proper or improper rests with the defendant. In Mescalero Apache Tribe v.

United States, Docket 22-G, 23 Ind. Cl. Comm. 181, 185 (1970), the

Commission stated:

* * * The burden is on the United States to provide a report in such detail, from all available data, so that it may be readily ascertained whether plaintiffs' funds were properly managed * * *

Defendant has provided no adequate justification for shifting that burden in the case. That defendant failed to maintain records, or that a tribal treasurer or bookkeeper handled funds, does not relieve defendant of its obligation to provide a complete report as to trust funds.

Accordingly, respecting exceptions (a) and (b), defendant will be ordered to provide a fuller accounting as to dates, amounts, purposes and sources for revenues and disbursements pertaining to plaintiff's tribal organization funds.

Exception (c).

Under this exception plaintiff seeks to have defendant's report supplemented to show the length of time which elapsed between each withdrawal from plaintiff's interest bearing accounts and the actual disbursement of such funds. Plaintiff asserts that the report fails to disclose whether the funds were expended with reasonable promptness, or were withheld from interest bearing status for an unreasonable length of time prior to disbursement. The defendant responded with a specific denial of wrongdoing or liability. Defendant asserted that if such wrongdoing or liability occurred, it must be proven by plaintiff, and that the records insofar as they exist are available to the plaintiff for review.

In Te-Moak Bands v. United States, Docket 326-A, 23 Ind. Cl. Comm. 70, 80 (1970), this issue was raised, and the Commission held that plaintiff is entitled to the requested information.

Plaintiff is entitled to know whether and how much interest income may have been lost due to dilatory practices in expending such funds. Accordingly, defendant will be ordered to furnish the information requested concerning the dates of withdrawal and subsequent disbursements from plaintiff's interest bearing accounts.

Exception (d).

Plaintiff asserts that at various times defendant disbursed funds from interest bearing accounts when non-interest bearing fund accounts were available and should have been used first. Plaintiff states that the GAO report is deficient for failing to show the credit balances in available non-interest bearing accounts at the times when disbursements were made from interest bearing accounts, so that the extent to which plaintiff lost interest income cannot be ascertained. Defendant responded, as in previous exception (c), that the records insofar as they exist are available to the plaintiff for review.

This issue was also previously ruled upon in favor of plaintiffs in Te-Moak, supra, pages 80-81. Defendant will accordingly be ordered to furnish appropriate information concerning the exact dates when the funds involved were acquired, the exact dates of the disbursements, and data which will reveal the credit balances in available non-interest bearing accounts when disbursements were being made from interest bearing funds.

Exception (e).

Plaintiff asserts that the report is deficient for failure to show the dates of the receipt and ultimate deposit (or, "covering into the United States Treasury") of plaintiff's interest bearing funds, and that the length of time interest-bearing funds were held before being covered into the Treasury is a determining factor in computing interest. The defendant denies that these interest-bearing funds were untimely covered into the Treasury.

The case of Menominee Tribe v. United States, 107 Ct. Cl. 23, 67 F. Supp. 972 (1946), decided that defendant has an obligation to cover interest-bearing funds into the Treasury within 30 days. The Court stated:

We are further of opinion that thirty days from the time the agent first received the money was ample time for defendant to have gone through the entire maze of administrative red tape preliminary to "covering" the money into the Treasury, and that, wherever it took a longer time plaintiff is entitled to recover interest in the interim. [Id. at 33.]

Defendant has in its possession the pertinent records, and plaintiff is entitled to the information contained in those records. Te-Moak, supra, at 79. Accordingly, defendant will be ordered to amend the report to show the length of time interest bearing funds were held before they were covered into the Treasury.

Exception (f).

Plaintiff states that up to July 1, 1930, it was entitled to, but did not receive, interest at the rate of 5 percent per annum, compounded annually, on the following tribal funds:

- (a) Proceeds of Labor, Eastern Navajo Indians, New Mexico;
- (b) Proceeds of Labor, Navajo Indians, Arizona and New Mexico (oil royalty and leases);
- (c) Proceeds of Labor, Navajo Indians of Leupp Agency, Arizona;
- (d) Proceeds of Labor, Northern Navajo Indians, New Mexico;
- (e) Proceeds of Labor, Southern Navajo Indians, Arizona; and
- (f) Proceeds of Labor, Western Navajo Indians, Arizona.

These funds were established pursuant to the Act of March 3, 1883 (22 Stat. 582, 590), which stated, in part, that the proceeds of all pasturage and sales of timber and other products of any Indian reservation not the result of the labor of any member of such tribe, "shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe."

Plaintiff has requested the Commission to determine as a matter of law that through June 30, 1930, defendant owed plaintiff the duty to manage its funds to produce not less than 5 percent interest per annum compounded annually. The plaintiff, however, is aware of our rulings in Te-Moak, supra, and in Mescalero Apache, supra, in which we requested that the respective plaintiffs submit supplementary briefs on the legislative history of the Congressional acts relied on by them as requiring payment of interest on Indian Moneys, Proceeds of Labor. The Commission presently has these cases under advisement. Therefore, the Commission will refrain from deciding this issue in this case pending decision in the Te-moak and Mescalero Apache cases.

Exception (g).

Plaintiff asserts that funds from various Navajo IMPL accounts were wrongfully expended by the defendant for administrative purposes, such as "miscellaneous agency expenses," and that defendant was under an obligation to use its own funds for such purposes. The money in these accounts included funds obtained through the management and development of the economic resources of the plaintiff. Defendant was the trustee of these accounts, and as such was governed by the legal duties which a trustee owes to his cestui que trust. See Sioux Tribes v. United States, 105 Ct. Cl. 725, 64 F. Supp. 312 (1946), cert. denied, 329 U. S. 680 (1946).

The report lists miscellaneous agency expenses and related expenses paid from plaintiff's trust accounts. Defendant maintains that the expenditures were properly made by the defendant in each instance.

The accounts under discussion as well as the goods and services wrongfully charged to plaintiff's trust accounts, as listed in Volume I of the report, are set forth by plaintiff as follows:

- (a). Interest and Accruals on interest, Proceeds of Labor, Navajo Indians, Arizona and New Mexico.

Miscellaneous agency expenses	\$ 2,083.77
(Disbursement Schedule #3, page 62)	

- (b). Proceeds of Labor, Eastern Navajo Indians, New Mexico.

Miscellaneous agency expenses	96.82
(Disbursement Schedule #6, page 70)	

(c). Proceeds of Labor, Navajo Indians, Arizona and New Mexico.	
Agency building and repairs: Warehouse, erection of (Disbursement Schedule #7, page 76)	334.58
Miscellaneous agency expenses (Disbursement Schedule #7, page 77)	29.36
(d). Proceeds of Labor, Navajo Indians, Arizona and New Mexico (Oil royalty and leases).	
Agency buildings and repairs: Miscellaneous building material Springhouse Heating plant (Disbursement Schedule #8, page 89)	326.50 183.00 59.50
Miscellaneous agency expenses (Disbursement Schedule #8, page 91)	7,267.62
(e). Proceeds of Labor, Northern Navajo Indians, New Mexico	
Miscellaneous agency expenses (Disbursement Schedule #10, page 104)	165.31
(f). Proceeds of Labor, Southern Navajo Indians, Arizona.	
Miscellaneous agency expenses (Disbursement Schedule #11, page 113)	20.80
(g). Proceeds of Labor, Western Navajo Indians, Arizona.	
Miscellaneous agency expenses (Disbursement Schedule #12, page 115)	17.50
Total expended for Administrative Purposes	<u>10,584.76</u>

The Commission has previously determined that plaintiff is entitled to recover from defendant for trust funds expended for such administrative purposes. Te-Moak, supra, at 83. We hold that plaintiff is likewise entitled to recover for the amount of such expenditures in this case, in the total sum of \$10,584.76.

The plaintiff also seeks interest from the dates of withdrawal of the various sums which comprise the total amounts in each of the above enumerated categories. The accounts in question were established pursuant to the Act of March 3, 1883, 22 Stat. 582, 590, as amended by the Act of March 2, 1887, 24 Stat. 463, and the Act of May 17, 1926, 44 Stat. 560. Section 2 of the Act of June 13, 1930, 44 Stat. 584, requires simple interest on and after July 1, 1930, at the rate of 4 percent per annum on all tribal funds (with balances exceeding \$500.00) arising under the Act of March 3, 1883, supra, as amended by the Act of May 17, 1926, supra, and included in IMPL funds.

Thus, the plaintiff is entitled to simple interest at 4 percent per annum on and after July 1, 1930, in the categories listed above. However, any determination of a possible award of interest on withdrawals prior to that date must be held in abeyance. This question can only be resolved when a ruling is made by the Commission concerning the effect of the various statutes, as discussed previously in exception (f) above.

The plaintiff's motion will be granted as to the items totaling \$10,584.76, with simple interest thereon at the rate of 4 percent

per annum after July 1, 1930. A ruling on the motion as to the claim of interest prior to July 1, 1930, will be deferred.

Exception (h).

Plaintiff's last exception is to defendant's failure to account beyond June 30, 1951. Defendant argues that an up-to-date accounting is not appropriate under the Indian Claims Commission Act. This issue is thoroughly discussed in Fort Peck Indians v. United States, Docket 184, 28 Ind. Cl. Comm. 171 (1972), in which the Commission concluded that it has jurisdiction to order the production of further data regarding wrongdoings accruing before August 13, 1946, and continuing thereafter. Therefore, whenever it is determined that the defendant was guilty of pre-1946 wrongdoings which have continued, the United States will be ordered to supplement its accounting with respect to those matters and accounts.

Accordingly, the Commission reiterates its ruling that the Commission has jurisdiction to order the production of further data regarding wrongdoings accruing before August 13, 1946, and continuing thereafter. If it is determined upon receipt of a complete accounting that the defendant was guilty of pre-1946 wrongdoings which have continued, the United States will be ordered to supplement its accounting with respect to those matters and accounts. In the interim and in the absence of such determination, the motion of plaintiff is hereby denied with respect to exception (h).

II. Docket No. 299

Plaintiff filed on January 28, 1971, a motion for partial summary judgment and for a complete accounting in Docket No. 299. Defendant filed a response to plaintiff's motion on March 10, 1971.

Plaintiff had filed two exceptions to the GAO report on March 18, 1970, and defendant had responded on December 14, 1970. As examination of the two exceptions indicates that what is in fact requested is a fuller accounting of the revenue arising from lumber sales, the motion will be treated as such.

Plaintiff's first exception alleged that defendant sold plaintiff's lumber and lumber products for an inadequate compensation, and requested a full accounting showing the quantity and grade of lumber sold and the consideration received by quantity and grade. Plaintiff's second exception in fact merely supplements the first exception, stating that of revenues of \$3,954,689.35 from lumber sales, data as to quantity, size, grade and unit selling price are provided only as to \$306,362.42. Plaintiff requests such data as to the remaining \$3,648,326.93.

In its motion for a complete accounting, plaintiff makes two requests. The first is for a complete accounting as to the aforementioned \$3,648,326.93. Plaintiff's exception (b) in Docket No. 69, which we have discussed above, includes the same request for information concerning the same \$3,648,326.93 receipts from sale of lumber.

For the purposes of subsequent proceedings in these consolidated dockets, we will consider plaintiff's exception (b) in Docket No. 69 to include plaintiff's original exceptions in Docket No. 299.

Plaintiff's second request in its motion in Docket No. 299 is for a complete and up-to-date accounting containing information pertaining to lumber sales beyond June 30, 1951. This is identical to exception (h) in Docket No. 69, and will be included in it for purposes of subsequent proceedings in these consolidated dockets.

We note in passing that defendant's responses to plaintiff's exceptions and motion in Docket No. 299 introduce no points not already made in its responses to plaintiff's parallel exceptions and motion in Docket No. 69.

III. Docket No. 353

On January 28, 1971, in Docket No. 353, plaintiff filed a motion for partial summary judgment and for a complete accounting to disclose the state of plaintiff's accounts with defendant concerning revenues arising from royalties from crude oil and natural gas.

Plaintiff had filed two exceptions to the GAO report on March 18, 1970, and defendant had responded on December 14, 1970. An examination of the two exceptions shows that what is in fact requested is a fuller accounting. We shall therefore treat the motion as a request for a complete accounting of the revenues accruing from oil and natural gas sales.

Plaintiff's original two exceptions are general and specific claims that certain royalties from crude oil and natural gas production are "unexplained and unaccounted for" with respect to the amount and quality of such natural products, or the value on which royalties were computed; and that in addition to the absence of detailed data pertaining to \$109,500.41 in royalties from crude oil and natural gas production through 1946, the GAO report also fails to provide such data concerning \$57,110.53 in royalties from 1947 through June 30, 1951. Plaintiff therefore prays that defendant be ordered to supplement the report to include full details pertaining to \$166,610.94 in royalties from oil and gas through June 30, 1951.

Although plaintiff did not indicate the portions of the report upon which the exceptions were based, we note that Volume II, Part II, Sections E, F and G, as well as Volume III, Part II, Section I, contain data concerning oil and gas leases or royalties. This information includes entries showing by fiscal year the number of barrels produced, royalty barrels, unit price therefor and the purported total amount of revenue from sales.

Portions of the GAO report disclose entries, beginning in 1925 and ending in 1950, which list "No detail" under the pertinent headings. In these "No detail" items no descriptive data are given with respect to quantity, grade, royalty or unit price of the products, although the purported total revenue therefrom is included in the report. We have reviewed the "No detail" entries in Volume II, Section E, and Volume III,

Section I, of the report. There are entries lacking explanation as to source, as alleged by plaintiff, which total at least the sum stated by plaintiff.

We have already determined herein, as regards exception (b) in Docket No. 69, that plaintiff is entitled to a full accounting of revenues in the amount of \$6,015,697.33, which includes the revenues from crude oil and gas products which are the subject of Docket No. 353.

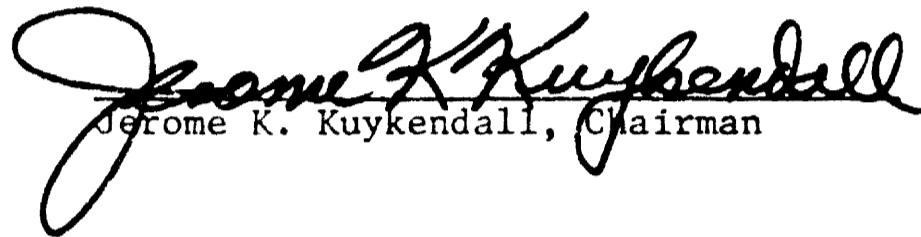
Therefore, for purposes of the subsequent proceedings in these consolidated dockets, we will deem plaintiff's exception (b) in Docket No. 69 to include plaintiff's original exceptions in Docket No. 353.

Plaintiff in its motion in Docket No. 353 requested a complete and up-to-date accounting containing information pertaining to royalties from crude oil and natural gas production beyond June 30, 1951. This is identical to exception (h) in Docket No. 69 and will be included in it for purposes of subsequent proceedings in these consolidated dockets.

We also note that defendant's responses to plaintiff's exceptions and motion in Docket No. 353 introduce no issues which were not raised in its responses to plaintiff's parallel exceptions and motion in Docket No. 69.


Since plaintiff's claims in Docket Nos. 299 and 353 overlap its claims in Docket No. 69, and since plaintiff's exceptions in Docket Nos. 299 and 353 are included in those of Docket No. 69, we will consolidate the dockets, and further proceedings in the consolidated dockets will be based on the exceptions in Docket No. 69.

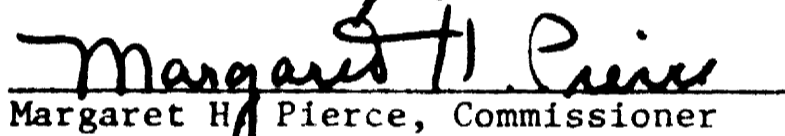
Plaintiff's motions for a fuller accounting will be granted as to exceptions (a), (b), (c), (d), and (e). Plaintiff's motion for summary judgment as it pertains to exception (g) will be granted in part, and plaintiff's motion for summary judgment as it pertains to exception (f), and for an up-to-date accounting as it pertains to exception (h), will be denied without prejudice.


Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner