BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE STANDING ROCK RESERVATION, SOUTH DAKOTA, Plaintiff,	)	
v.	)	Docket No. 119
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: July 11, 1974

Appearances:

Marvin J. Sonosky, Attorney for the Plaintiff.

Richard L. Beal, with whom was Assistant Attorney General Shiro Kashiwa, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

This accounting case is before the Commission on a motion by plaintiff for an order fixing a time certain for defendant to furnish certain data, and for rulings on issues of law, and a motion by defendant for summary judgment and for leave to amend answers to the amended exceptions.

Plaintiff filed its accounting petition in 1951, asking for an accounting from July 1, 1925, of funds held by defendant pursuant to various acts of Congress. An accounting for the period up through

June 30, 1925, had been adjudicated by the Court of Claims. Sioux Tribe v. United States, 105 Ct. Cl. 658, 64 F. Supp. 303, remanded, 329 U.S. 684 (1946), judgment reentered 112 Ct. Cl. 39 (1948), cert. denied, 337 U. S. 908 (1949); Sioux Tribe v. United States, 105 Ct. Cl. 725, 64 F. Supp. 312, remanded, 329 U.S. 685 (1946), judgment reentered, 112 Ct. Cl. 50 (1948), cert. denied, 337 U.S. 908 (1949). (The case reported at 105 Ct. Cl. 658 concerns an accounting of the consideration stipulated in the agreement of 1889, 25 Stat. 888, and will be referred to hereinafter as Sioux I. The case reported at 105 Ct. Cl. 725 concerns a general accounting, and will be referred to hereinafter as Sioux II.)

In response to plaintiff's petition, defendant filed a General Accounting Office Report, certified April 26, 1957. Of the subsequent history of the case to 1971, suffice it to say that pursuant to our decision reported at 26 Ind. Cl. Comm. 92 (1971), twenty amended exceptions to the GAO Report, filed by plaintiff on April 24, 1970, are before us.

Defendant filed an answer on November 4, 1971, to the amended exceptions, and plaintiff filed a reply to defendant's answer, and a motion for an order fixing time for defendant to furnish data, and for rulings on issues of law, on October 23, 1973, defendant filed motions requesting leave to file an amended answer to plaintiff's amended exceptions and for partial summary judgment.

Plaintiff on November 1, 1973, filed a response to defendant's motion for leave to amend, to which defendant filed a reply on November 13, 1973. Plaintiff filed a response to defendant's motion for summary judgment on December 3, 1973, to which defendant filed a reply

December 11, 1973.

Defendant argues in its amended answer that, insofar as amended exceptions 2-6, 13 and 14 may relate to funds appropriated or expended under section 17 of the Act of 1889, 25 Stat. 894, plaintiff is barred by res judicata and collateral estoppel from asserting that the money involved tribal funds. Defendant states that the Court of Claims determined in the Sioux cases, supra, that funds appropriated and expended under the Act of 1889 on behalf of plaintiff were in excess of any amount due under any obligation existing by treaty or legislation, and that the expenditures that were made after such fulfillment of the obligations under the Act of 1889 were gratuitous. Thus, defendant asserts that it is under no duty to make an accounting of additional funds disbursed since 1925 pursuant to the Act of 1889.

Plaintiff's response to defendant's motion argues that since defendant did not assert the aforementioned defenses for twenty-two years after the complaint was filed in August 1951, such defenses were waived by the defendant.[1/] Defendant's reply states that plaintiff's amended exceptions were filed in May 1970, almost six years after they

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1/ Actually, defendant previously raised the defense of res judicata in its response filed on May 25, 1970, to plaintiff's motion to file amended exceptions to the petition. At that time defendant referred to claims made in the amended petition for Fifth Amendment takings under the acts of May 29, 1908, 55 Stat. 460, and February 14, 1913, 37 Stat. 675, and stated that such claims could have previously been asserted under the jurisdictional act of June 3, 1920, 41 Stat. 738, which defendant alleged was broad enough to have allowed claims for such takings. The Commission rejected this defense, 26 Ind. Cl. Comm., supra.

were due according to the Commission's order of April 2, 1964. Defendant argues, and we concur, that the interests of justice are no less served in permitting amendment by defendant to set forth affirmative defenses,[2/] than in permitting the aforesaid amended exceptions to be filed by plaintiff after a long delay.

We will therefore grant defendant's motion for leave to file an amended answer, and proceed to consideration of defendant's argument therein, as described above.

The Court of Claims determined in Sioux Tribe v. United States, 97 Ct. Cl. 391 (1942), that the liability of defendant for 9,261,592.62 acres of land ceded by the Sioux Tribes under the Act of 1889 was in the amount of $5,307,655.87. The court then, in Sioux I, made an accounting of all funds appropriated and expended under the 1889 act, and determined that the accounts showed a net deficit against plaintiff which represented "gratuitous expenditures from public funds for the benefit of the bands of plaintiff tribe as shown after the permanent fund and interest thereon had been exhausted by reimbursable and current expenditures." Sioux I, supra, at 723.

Thus, the court determined that defendant had met its treaty obligations, and had made additional gratuitous expenditures under section 17 of the 1889 act for plaintiff's benefit in the total amount of $751,980.85, covering a period from 1915 to 1925. Sioux I, supra,

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2/ Defendant's amended answer dated October 23, 1973, is an amendment to its answer filed November 4, 1971, to plaintiff's amended exceptions.

Finding 9(b), at 672-73. The fact that the funds and expenditures continued after 1925 only resulted in greater gratuities being expended on behalf of plaintiff. Defendant has no obligation to account for such gratuitous expenditures.

However, amended exceptions 2-5 are concerned with other funds in addition to those expended under section 17 of the 1889 act, specifically, Indian Money Proceeds of Labor (IMPL) funds. We therefore can only deny exceptions 2-5 insofar as they relate to funds or appropriation accounts established pursuant to section 17 of the 1889 act.

However, exceptions 6, 13 and 14 apply only to certain expenditures made under the 1889 act. We therefore will dismiss exceptions 6, 13 and 14.

Exception No. 1

Plaintiff's first exception is from the 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, if 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. In the interim and in the absence of such determination, the motion of plaintiff with respect to exception No. 1 will be denied without prejudice. See Blackfeet and Gros Ventre Tribes of Indians v. United States, Docket No. 279-C, et al., 32 Ind. Cl. Comm. pp. 65, 71-76 (1973).

Exception No. 2

Plaintiff's second exception is from defendant's failure to cover funds into interest bearing accounts without undue delay, and for failure to report facts from which it can be determined whether receipts were covered without undue delay. Plaintiff requests from defendant the dates funds were received and the dates that they commenced to earn interest, in order to ascertain the extent, if any, of damages owing to delays of more than thirty days. Defendant denies any duty to supply more detailed facts.

The G.A.O. report includes Part IV "Appropriations, funds and interest on funds, under or from which disbursements were made," pages 337 to 344, which lists the appropriations and funds available to plaintiff for the period of the report, or July 1, 1925, to June 30, 1951. On reviewing the accounting report, we conclude that the report does not disclose how long the money was held outside the treasury. The record is thus inadequate to determine whether there was an undue delay in covering funds into the interest bearing accounts. Plaintiff is entitled to this information. Fort Peck, supra, at 184. See also Blackfeet, supra, at page 88. Defendant therefore will be ordered to report the pertinent facts requested. 3/

3/ As we concluded above, the order to defendant to report additional facts as to exceptions 2, 3 and 5 does not extend to funds expended under section 17 of the 1889 act, supra.

Exception No. 3

Plaintiff's third exception is from defendant's failure to indicate the dates and amounts of warrants and certificates of deposit covering receipts credited into the principal fund, and from defendant's failure to show the amounts of interest credited to the interest fund, and thus for failure to compute interest correctly. Our review of Part IV of the accounting report leads us to conclude that the information requested is not contained therein. Plaintiff is entitled to this information. Defendant therefore will be ordered to report the facts requested.

Exception No. 4

Plaintiff's fourth exception is based on defendant's alleged "reverse spending," that is, spending the interest-bearing funds when non-interest-bearing funds were available, and for failure to report facts necessary to ascertain the amount lost through "reverse spending." The plaintiff refers to eight interest-bearing funds in the G.A.O. report, pages 327 to 344, including interest on IMPL funds, and requests that defendant be required to report the balances in the interest-bearing and non-interest-bearing accounts on the various dates of withdrawal.

The Commission has held that plaintiff is entitled to such information. Southern Ute v. United States, 17 Ind. Cl. Comm. 28, 60-61 (1966), aff'd, 191 Ct. Cl. 1, 423 F. 2d 346 (1970) rev'd on other grounds, 402 U.S. 159 (1971). See also, Fort Peck, supra, at 185. See generally Menominee Tribe v. United States, 101 Ct. Cl. 10 (1944). Recently, however, in Blackfeet, supra, at 90, the Commission has qualified the prior rulings to the extent that the G.A.O. reports may furnish certain information from

which the pertinent data requested by plaintiff can be obtained, as follows:

> Insofar as this matter can be separated from that of holding funds outside the treasury, we believe the reports on file are sufficient. Year-end balances in all the plaintiffs' treasury funds, interest-bearing and non-interest-bearing, can be derived from the yearly schedules of receipts and expenditures--or obtained from published treasury reports. From these we believe the losses from reverse spending can be calculated

Thus, for similar reasons, plaintiff's request that defendant be ordered to furnish additional data as to this exception will be denied.

Exception No. 5

Plaintiff's fifth exception is from defendant's alleged premature withdrawals from interest-bearing funds, causing the tribe to lose interest, and for failure to report dates of withdrawal and of disbursement, such dates being necessary to ascertain the amount of interest due the plaintiff.

Defendant's accounting report does not contain the information plaintiff requests, and plaintiff is entitled to this data. In Fort Peck, supra, the Commission determined as follows (page 184):

> * * * The accounting report does not reflect the length of time that plaintiff's funds were withheld from interest bearing status to the credit of defendant's disbursing agents prior to expenditure. Whether or not these funds were spent with reasonable promptness cannot be determined from the accounting submitted by the defendant. Plaintiff is entitled to the requested information.

Accordingly, the Commission will order the defendant to furnish the information concerning the dates of withdrawal and subsequent disbursements from plaintiff's interest bearing accounts in the instant case.

Exception No. 6

This exception is no longer under consideration, having been dismissed hereinabove pursuant to defendant's motion.

Exception No. 7

Plaintiff's seventh exception is from the defendant's failure to furnish the dates on which specified items were credited to various accounts. The information was requested in order to determine damages, as for reverse spending. Defendant agreed in his answer that "if possible" the information should be furnished by amended response, and on July 12, 1972, defendant reported the dates requested.

Accordingly, the plaintiff should now make exception, if it has any, to this portion of the accounting submitted by the defendant. This Commission will grant a period of 30 days in its order to enable the plaintiff to make exception, if any, to the material in question.

Exception No. 8

Exception number 8 is not under consideration, having been dismissed by the Commission in previous action.

Exception No. 9

Plaintiff's ninth exception concerns interest on Indian Moneys, Proceeds of Labor (IMPL) funds. Defendant paid no interest on IMPL funds until an interest account was established pursuant to the Act of June 13, 1930, 46 Stat. 584. The IMPL fund was created by Congress by the appropriation act of March 3, 1883, c. 141, 22 Stat. 582, 590.

In Te-Moak Bands of Western Shoshone Indians v. United States, Dockets 326-A, et al., 31 Ind. Cl. Comm. 427 (1973), we concluded that the United States had a duty to make all its Indian trust funds productive. The Commission held, at page 449, that Congress intended trust funds to be invested "if they were on hand long enough to make investment practicable."

The Commission determined in Te-Moak as to IMPL funds that the damages will be measured by the loss of growth of the plaintiff's respective shares therein due to the failure of the government to invest, and that the correct measure is 5% interest compounded annually. Accordingly, the defendant is liable to the plaintiff for its failure to make these funds productive during the period prior to July 1, 1930, the effective date of the 1930 act.

Exception No. 10

Plaintiff's tenth exception is from defendant's expenditure of IMPL funds allegedly contrary to statutory limitations. IMPL funds were authorized by the appropriation act of March 3, 1883, 22 Stat. 582, 590, directing that proceeds from "all pasturage and sales of timber, coal or other product of any Indian reservation be covered into the treasury for the benefit of the tribe." However, the Act of May 18, 1916, 39 Stat. 123, 159, required congressional appropriation for all expenditures from "Indian tribal funds" except for: "Equalization of allotments, education of Indian children . . ., per capita and other payments. . . ."

The G.A.O. report (pages 70-71) lists disposition of available IMPL funds and interest belonging to the plaintiff during the period from July 1, 1925, through June 30, 1951, pursuant to the Act of March 3, 1883, supra, in the total amount of $95,677.12.

Plaintiff argues that only two of 19 items or categories of expenditures are included in the aforementioned exemptions to the statute's limitations, as discussed above. These two are expenditures for education ($7,369.02) and "per capita" ($3,547.63), as shown in Statement #2, page 69, of the G.A.O. report, listing the disbursements made for the plaintiff under the Act of March 3, 1883, supra.

However, the language of the 1916 statute exempts not only expenditures for education and per capita, but also expenditures for "other payments." The balance of the expenditures were for "other payments." Neither party has addressed itself to the significance of the term "other payments." We will defer a decision on the issues raised by this exception until after we have considered the briefs of the parties.

Exception Nos. 11 and 12

Plaintiff's eleventh and twelfth exceptions deal with the same portion of the accounting report concerning IMPL funds as we discussed in exception 10. In exception 11 plaintiff takes issue with expenditures of IMPL funds totalling $26,800.80 for livestock, and totalling $74 for feed and care of livestock. Plaintiff alleges that the accounting report does not show that these expenditures were for the tribal herd.

In exception 12 plaintiff alleges that the 19 disbursement classifications listed in the G.A.O. report are not explained adequately to show whether funds were expended for the direct and exclusive benefit of the tribe.

The Act of March 3, 1883, 22 Stat. 582, 590, authorizing IMPL funds, directed that expenditures therefrom be made "for the benefit of" plaintiff Indians. Certain of the disbursement classifications are identical to categories of expenditures which were challenged in Sioux II, and disallowed by the Court of Claims as not being for the exclusive benefit of the Indians, but for obligations of defendant.

Expenditures for education were disallowed, Sioux II at 802 ff., as were expenditures for provisions, Id. at 775 ff. We conclude therefore that expenditures by defendant in this docket, in the amount of $7,369.02 for education, and $1,777.50 for provisions, objected to by plaintiff in exception 12, were improperly charged against tribal funds.

In Sioux II the Court concluded that agencies and their necessary expenses were obligations of defendant, unless defendant could prove by satisfactory evidence what portion of the expenses was chargeable against Indian funds. Id. at 788. Defendant will have an opportunity to offer such proof, as to agency expenses in this docket, at trial.

All of the remaining items under consideration may or may not have been for the exclusive benefit of plaintiff. These may be disallowed if at trial defendant is not able to show a reasonable connection between these items and the purposes of spending authorized by the 1883 act.

We can therefore proceed to trial as to exceptions 11 and 12. See Blackfeet, supra, 85, 111.

Exception Nos. 13 and 14

These exceptions are no longer under consideration, having been dismissed hereinabove pursuant to defendant's motion.

Exception No. 15

Plaintiff's fifteenth exception is from defendant's failure to account for lands reserved for and lands patented to religious organizations pursuant to acts of 1908 and 1913. (Act of May 29, 1908, 35 Stat. 460; Act of February 14, 1913, 37 Stat. 675.) Plaintiff states that in the accounting to 1925 before the Court of Claims, defendant reported dates, land descriptions and acreages of lands reserved and patented under the aforementioned acts. Plaintiff asks that the accounting in this case contain corresponding information. Defendant denies any liability arising from exclusion of the information from the accounting report.

The accounting to 1925 was in part concerned with disposition of reservation lands pursuant to the 1908 and 1913 acts. Information concerning the lands reserved for and patented to religious organizations was pertinent in that context. Plaintiff has not shown the relevance of such information in this case, or, for that matter, given any reason to think there is any information concerning the disposition of these lands more than was presented in the earlier accounting report. We conclude that plaintiff's exception is without merit.

Exception No. 16

Plaintiff's sixteenth exception complains of defendant's failure to account for lands sold after 1925 pursuant to the 1908 and 1913 acts, supra. While defendant's accounting report shows proceeds from the sale of lands, data concerning the sales showing prices and acreage, and showing the amount of acreage remaining unsold, is lacking.

Defendant is ordered to furnish information showing acreage and prices of the lands disposed of after 1925 under the 1908 and 1913 acts, and the amount of acreage, if any, remaining unsold. See Blackfeet, supra, p. 76 et seq.

Exception Nos. 17 and 18

Plaintiff's seventeenth exception complains of defendant's failure to pay a "fair rate of interest" on proceeds from the sale of the tribe's lands under the 1908 act, supra. Plaintiff states that the proceeds were placed in the Treasury in accordance with Section 6 of the act at 3% interest, and alleges that this rate was below the market.

Plaintiff states that it will offer evidence to support its contentions. We may proceed to trial as to these exceptions.

Exception No. 19

Plaintiff's nineteenth exception complains of defendant's action including in the 3% fund for the 1908 act, supra, $50,078.85 from sources other than those specified in the act. Plaintiff requests that defendant recast the accounting report to credit the money to the appropriate account. Defendant concedes that it has responsibility to ascertain the source of the questioned money, and to recast the accounts if necessary. The Commission will order the defendant to do so.

Exception No. 20

Plaintiff's twentieth exception complains of defendant's expenditure of tribal funds contrary to pertinent law. The funds in question were derived from sale of tribal lands under the aforementioned 1908 and 1913 acts.

The report shows disbursement of $508,976.60. Plaintiff has no objection as to the propriety of expenditures in the report totaling $182,547.37. As to the remaining expenditures, plaintiff's exception falls into four categories.

A. Plaintiff objects that certain of the disbursements were obligations of the United States. These were disbursements, totaling $99,100.37, for education and provisions. In the previous accounting case between these parties in the Court of Claims such disbursements were held to be improper, on the grounds that these expenditures were for continuing obligations of the United States under treaties negotiated between the parties, and plaintiff was held entitled to recover the amounts disbursed. Sioux II, supra, pp. 775, 800-05. We therefore conclude that these expenditures were improperly made from tribal funds.

B. Plaintiff objects that the explanation given in the accounting report indicates that after July 1, 1925, the defendant made expenditures out of tribal funds for agency, administrative and governmental purposes which were obligations of the defendant. These were expenditures totaling $75,947.76. (Plaintiff arrived at a far higher total by

erroneously including expenditures for education in this section as well as in the previous section.)

Administrative expenses of the United States Indian Agency are not proper objects for the expenditure of tribal trust funds. Sioux II, supra, at 783; Rogue River Tribe v. United States, 105 Ct. Cl. 496, 551, 64 F. Supp. 339, 343-344 (1946); Seminole Nation v. United States, 102 Ct. Cl. 565, 624, 626, cert. denied, 326 U.S. 719 (1945). Sioux II lists some of the items in this category as pay of miscellaneous agency employees, agency buildings and repairs, building materials, incidental agency expenses, automobiles, purchase, repair and maintenance, motor trucks, pay of agent and among other categories, the salaries of several classes of employees. Sioux II, 782-783, 800, 802.

The expenditures herein listed in this exception, including agency buildings, administration, automobiles and pay of employees of the agency, are in the same categories as those listed in Sioux II or other cases cited above. Defendant will have an opportunity at trial to prove by satisfactory evidence what portions of these expenditures were properly chargeable against Indian funds. See discussion of exceptions 11 and 12, above.

C. Plaintiff objects that defendant includes $19,883.00 for "unidentified items." In Blackfeet, supra, at page 117, the Commission disallowed a similar expenditure for unidentified items. We therefore conclude that these expenditures were improperly made from tribal funds.

D. Plaintiff objects that the explanation in the accounting report is inadequate as to some eighteen categories of expenditures having a total sum of $131,498.10, as listed in Statement #13 of the GAO report at pages 150-151. Plaintiff states that the captions do not clarify whether the expenditures were chargeable against trust funds or whether the funds were expended for governmental purposes as obligations of the defendant under another act, or, for the benefit of individual Indians, or for other purposes, not chargeable against tribal funds.

The items toward which the plaintiff directed its motion for rulings on certain issues of law concerning the amended exceptions are shown in the following list of categories of expenditures. (Statement #13, G.A.O. report, pages 150-151.)

1.	Advertising	$ 98.51
3.	Agricultural aid:	
	a. Clearing, breaking, and fencing land	54.15
	b. Pay of farm laborers	5,386.79
	c. Planting and harvesting crops	5.45
	d. Seeds, fruit trees, and fertilizer	1,030.07
	e. Wells and well equipment	17.70
4.	Agricultural implements and equipment	5,010.02
6.	Clothing	609.58
8.	Expenses of Indian delegations	3,445.13
9.	Expenses of Indian fairs	443.82
10.	Fuel and light	15,544.35
11.	Funeral expenses	8,348.33
12.	Hardware, glass, oils and paints	376.87
13.	Household equipment and supplies	421.25
14.	Livestock:	
	a. Feed and care of	957.65
	b. Purchase of	19,390.20

16.	Medical attention:	
	a. Drugs	$ 3,745.98
	b. Erection and repairs of hospital	1,494.35
	c. Fuel and light	127.20
	d. Hospital care	7,737.27
	e. Hospital equipment	4,561.91
	f. Pay and expenses of physicians	1,583.62
	g. Pay of miscellaneous hospital employees	16,594.84
	h. Pay of nurses	5,944.83
17.	Mills and shops:	
	a. Erection, repairs, and supplies of blacksmith shops	363.88
	b. Erection, repairs, and supplies of carpenter shops	49.24
	c. Pay of blacksmiths	3,581.00
23.	Pay of attorneys	5,140.98
36.	Presents to Indians	1,041.05
39.	Roads and bridges	92.08
40.	Surveying and allotting	17.08
41.	Transportation of Indian supplies	18,282.92
	Total:	$ 131,498.10

The above funds were expended under the Act of May 29, 1908, 35 Stat. 460, as amended by the act of February 17, 1910, 36 Stat. 196, and pursuant to the act of February 14, 1913, 37 Stat. 675. Section 6 of the 1908 act provided that the funds derived from the sale of the Standing Rock Reservation lands "be expended for the Indians' benefit under the direction of the Secretary of the Interior." Section 6 of the 1913 act provided that the proceeds of the sales of reservation lands ". . . shall be at all times subject to appropriation by Congress for their education, support and civilization."

All of the items listed are subject to interpretation as falling within the literal meaning of the terms "for the Indians' benefit" or "for their education, support and civilization." However, these may be disallowed if at trial defendant is not able to show a reasonable

connection between these items and the aforesaid authorized purposes of spending.

For example, item 23 on the above list shows $5,140.98 spent for "pay of attorneys." Such expenditures might or might not have been for authorized purposes. Defendant will have an opportunity to show at trial that it was for authorized purposes; if it is unable to make such a showing, the item may be disallowed.

We therefore can proceed to trial as to exception No. 20. See Blackfeet, supra, at 85, 111.

Exception No. 21

Plaintiff's twenty-first exception concerns defendant's alleged failure to furnish adequate information and defendant's alleged expenditures contrary to law and trustee-fiduciary standards. A portion of plaintiff's exception concerns alleged inadequacies in the report and in effect simply repeats the twelfth exception and that part of the twentieth exception discussed as part "D" above. We have already determined hereinabove that the case may proceed to trial as to plaintiff's twelfth exception and part "D" of the twentieth exception.

In addition, plaintiff maintains that defendant's accounting report does not confirm distribution and delivery of various listed items to the Indians, despite laws and regulations calling for such records. Plaintiff's demand for proof of distribution and delivery is well taken. Accordingly, defendant will be ordered to make the appropriate records available for inspection by plaintiff. Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 34 Ind. Cl. Comm. 122, 151-52 (1974).

Plaintiff also maintains that the records do not indicate whether items were distributed to Indians in payment for labor performed by the Indians. Regulations in effect at the time provided that Indians could be recompensed for their labor in such a fashion. We pointed out in Blackfeet that such information can be obtained, without order of the Commission, under Rule 14, et seq. of our Rules of Practice (25 C.F.R. 503.14 (1968)). Id. 95.

Plaintiff maintains in addition that the report fails to indicate the existence of any cash returns and credits arising from sale of goods to federal or contract employees, or refunds or credits because of defective goods, failure to deliver, spoilage, or other reasons. This request is denied. Blackfeet, supra, pages 68, 84 ff.

Finally, plaintiff requests an accounting of certain property purchased by defendant with plaintiff's trust money, specifically, agency buildings, automobiles and vehicles, shops for carpenters and blacksmiths, and school buildings. As to those items, we will follow Blackfeet, wherein we ruled that defendant must furnish an accounting as to buildings, Id. 81, and specified the requirements of an accounting as to movable property, Id. 83.

Future Proceedings

Exceptions 11, 12 and 20, as we have indicated in our foregoing discussions, deal with the question of whether certain disbursements made by defendant were in fact made "for the benefit of" plaintiff. We have determined above that we can proceed to trial as to these

exceptions. Exceptions 10, 17 and 18 are also ready for trial. In the interests of moving this case along, we will schedule a trial as to these exceptions.

In some of the remaining exceptions before us, defendant has conceded an obligation to furnish data in addition to that in the accounting reports. In several other exceptions we have determined defendant has an obligation to furnish additional data. Plaintiff requests us to furnish a date certain for the provision of such information.

The Commission is under congressional mandate to complete these cases within a time certain. Therefore, it is appropriate that the parties also work within fixed time limits.

As to exceptions 2, 3 and 5, it appears to the Commission, on the basis of our examination of the GAO Report, that relatively small sums are involved. It is clear, nonetheless, that these exceptions cannot be resolved without further accounting. We suggest that plaintiffs carefully evaluate whether, or to what extent, they are really worth urging. Detailed data such as would be required by literal implementation of plaintiff's demands for supplemental accounting does not appear warranted, and in our view would not be to the benefit of either party.

We will order the parties to attend a conference before Commissioner Vance and Mr. Gallagher of the Commission staff to discuss what further information should be supplied by defendant and in what form. We

suggest that the parties consider the use of data collected from selected representative sample periods. For example, supplemental data for every fifth year would appear to provide an adequate sample on which to base a reasonable estimate of possible damages, if any, with regard to the exceptions under consideration.

As to exceptions 16, 19, and 21, in which we have determined that defendant is required to furnish additional information, defendant will be ordered to furnish said information within 60 days.

Plaintiff will have 60 days within which to respond to defendant's filing. The nature of those exceptions is such that when the data is submitted, and after plaintiff has made its amended exceptions thereto, if any, it is possible that they may be disposed of on motion without the necessity for further trial.

If defendant has not supplied the additional data called for within the prescribed period, the Commission will request plaintiff to submit a claim for damages based on existing evidence. If plaintiff, after receipt of defendant's additional data, has not filed amended exceptions thereto within 60 days, we will entertain a motion for dismissal as to the relevant exceptions.

John T. Vance, Commissioner

We concur:

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

Kuykendall, Chairman, and Yarborough, Commissioner, concurring:

We concur, since we are now bound by the authority of Te-Moak Bands of Western Shoshone Indians v. United States, Dockets 326-A, et al., 31 Ind. Cl. Comm. 427 (1973), in which we dissented from the views of the majority of the Commission concerning the proper measure of damages for defendant's failure to make the plaintiffs' IMPL funds productive. We stated that the proper measure of such damages is simple interest on the unproductive balances which were in, or should have been in, these accounts. Since the majority decided otherwise, we now are bound to follow the authority of Te-Moak, supra, in the instant case.

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner