

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE	)	
PINE RIDGE RESERVATION, SOUTH	)	
DAKOTA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 117
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: November 22, 1974

Appearances:

Arthur Lazarus, Jr., Attorney for the Plaintiff.

Richard L. Beal, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for 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 motions by defendant for summary judgment and for leave to file amended 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 price stipulated in the Act 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 on March 30, 1959. Of the subsequent history of the case, suffice it to say that pursuant to our decision reported at 26 Ind. Cl. Comm. 92 (1971), seventeen amended exceptions to the GAO Report, filed on September 15, 1970, by plaintiff, are before 1/ us.

Defendant filed an answer on November 4, 1971, to the amended exceptions, and on November 18, 1971, 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 November 20, 1973, defendant filed motions requesting leave to file an amended answer to plaintiff's amended exceptions and for partial summary judgment. Plaintiff filed a response to defendant's motion for leave to amend, and a separate response to defendant's motion for partial summary judgment, to which defendant filed replies.

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1/ Eighteen exceptions were filed, but exception number 8 was dismissed in the 1971 decision.

Docket 117 is for the most part parallel to Dockets 118 and 119. The respective plaintiffs in the latter two dockets are Sioux tribes from the Standing Rock and Rosebud reservations, predominantly raising issues and relying on arguments similar to those raised by the Pine Ridge Sioux in the instant case. Many of the issues raised in Docket 117 were therefore discussed and disposed of by the Commission in Dockets 119 and 118. Consequently many of the issues before us now will be decided by reference to our decision in Docket 119, 34 Ind. Cl. Comm. 230 (1974), referred to hereinafter as Standing Rock, or our decision in Docket 118, decided today, referred to hereinafter as Rosebud.

Defendant argues in its amended answer that, insofar as amended exceptions 2 through 6, and 12, 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 May 1951, such defenses were waived by defendant.<sup>2/</sup> Defendant's reply states that plaintiff's amended exceptions were filed in September 1970, almost six years after they were due according to the Commission's order issued in April 1964. Defendant argues, and we concur, that the interests of justice are no less served in permitting an amended answer by defendant to set forth affirmative defenses, than in permitting the aforesaid amended exceptions to be filed by plaintiff after a long delay.<sup>3/</sup>

In considering the substance of defendant's argument in its amended answer, we refer to Standing Rock, supra, at 233-34, where we dealt with this question. We concluded therein that the Court of Claims determined that defendant had met its treaty obligations prior to 1925, and that additional expenditures under section 17 of the 1889 act for plaintiff's benefit were gratuitous. In the case of the Pine Ridge Reservation, the treaty obligation had been met by 1916. (The subsequent expenditures for the Pine Ridge reservation, covering the period from 1916 to 1925, totalled \$1,566,056.55.) Expenditures after 1925 only resulted in additional gratuities. Defendant has no obligation to account for such gratuitous expenditures.

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<sup>2/</sup> On October 15, 1970, defendant raised the defense of res judicata in its further response to plaintiff's motion to file amended exceptions to the petition. (Defendant incorporated by reference its memorandum filed in Docket 119 relative to similar motions.) Defendant thus referred to claims made in the amended petition for Fifth Amendment takings under the acts of March 3, 1909, 35 Stat. 781, 810 and May 27, 1910, 36 Stat. 440, and stated that such claims could have been asserted previously 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.

<sup>3/</sup> Defendant's amended answer filed November 20, 1973, is in reference to its answer filed November 4, 1971.

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.

Exceptions 6 and 12 apply only to certain expenditures made under the 1889 act. We therefore will dismiss exceptions 6 and 12.

Exception No. 1

Plaintiff's first exception is based upon the failure of defendant to account beyond June 30, 1951. An up-to-date accounting is required only if it is determined that defendant was guilty of pre-1946 wrongdoings which have continued. Standing Rock, supra, at 234-35. The motion of plaintiff with respect to this exception is therefore denied without prejudice.

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 the facts from which it can be determined whether receipts were covered into interest-bearing accounts without delay.

On reviewing the accounting report, we conclude that the report does not disclose how long plaintiff's funds were 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. Id., at 235. Defendant will therefore be ordered to report the pertinent facts requested.<sup>4/</sup>

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 to 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 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 interest-bearing funds when non-interest-bearing funds were available, and for failure to report facts necessary to ascertain the degree of "reverse spending." Plaintiff refers to seven interest-bearing funds in the GAO Report, pages 359 to 369, including interest on IMPL and "proceeds of lands" 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.

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<sup>4/</sup> 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.

The ramifications of this exception are fully discussed in Standing Rock. We concluded that data in the GAO Report is adequate to allow plaintiff to calculate losses from reverse spending. Id., at 236-37. Therefore 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 based on defendant's alleged premature withdrawal 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 plaintiff.

Defendant's accounting report does not contain the information plaintiff requests, and plaintiff is entitled to this data. Id., at 237. Accordingly, the Commission will order defendant to furnish the information concerning the dates of withdrawal and subsequent disbursements from plaintiff's interest-bearing accounts in the instant docket.

Exception No. 6

This exception is no longer under consideration, as we have decided hereinabove that it will be dismissed.

Exception No. 7

Plaintiff's seventh exception pertains to defendant's failure to furnish certain dates on which specified items were credited to various accounts. The information was requested in order to determine damages, if any, as for reverse spending. On July 13, 1972, the defendant reported the dates requested. The plaintiff should now file an exception,

if it has any, to the recently submitted data. The Commission will grant a period of 30 days for plaintiff to make such exception to the material in question submitted by defendant.

Exception No. 8

The eighth exception asserted by plaintiff is based on the asserted failure of defendant to account for IMPL funds prior to July 1, 1925. This exception is no longer under consideration, having been earlier dismissed by the Commission. 26 Ind. Cl. Comm. 92, 95-96 (1971).

Exception No. 9

Plaintiff's ninth exception concerns interest on Indian Money, 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. The Commission has determined in Standing Rock, supra, at 239, that pursuant to our decision in Te-Moak Bands of Western Shoshone Indians v. United States, Dockets 326-A, et al., 31 Ind. Cl. Comm. 427 (1973), defendant had a duty to make Indian trust funds productive, and is liable to plaintiff for its failure to do so during the period prior to July 1, 1930, the effective date of the 1930 act.

Exception No. 10

Plaintiff's tenth exception is based on the defendant's asserted expenditure of IMPL funds contrary to statutory limitations. IMPL funds were authorized by the appropriation act of March 3, 1883, supra, directing that proceeds from "products of any Indian reservation be



covered into the treasury for the benefit of the tribe." The act of May 18, 1916, 39 Stat. 123, 159, required congressional appropriation for all IMPL expenditures except for "equalization of allotments, education of Indian children, per capita and other payments."

These same expenditures are objected to in exception 11, infra. We determine, in our discussion as to exception 11, that these expenditures were improperly charged by defendant against plaintiff's trust funds, except for \$20 for "payment for deprecations." Therefore we will limit our discussion of exception 10 to the item "payment for deprecations."

Plaintiff asserts that only one of the categories of expenditures listed in the GAO report, expenditures for education, is included in the aforementioned exceptions to the statute's limitations. However, the broad language of the 1916 statute excepts not only expenditures for education, but those made for "other payments." The "payment for deprecations" could be considered "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. Standing Rock, supra, at 240.

#### Exception No. 11

Plaintiff's eleventh exception deals with the same portion of the accounting report concerning IMPL funds as we discussed in exception 10. Plaintiff alleges in exception 11 that the twenty disbursement classifications (GAO report, p. 80) are not explained adequately and that funds totaling \$10,233.96 were expended not for the direct and exclusive

benefit of the tribe, but for certain continuing obligations of the defendant.

In support of the latter allegation, plaintiff argues that these expenditures are part of continuing obligations of the defendant under Article 5 of the 1877 act, 19 Stat. 254. Plaintiff cites Sioux I and Sioux II in support of its claim.

We discussed this issue at length in Rosebud, and determined that defendant had made expenditures in a number of categories <sup>5/</sup> in accordance with its view of its obligations under the 1877 act. We concluded in Rosebud that it is improper for defendant to charge these expenditures against plaintiff's IMPL funds.

We therefore conclude that all expenditures for the purposes shown in the aforementioned list were improperly charged by defendant against Indian trust funds. In dealing specifically with exception 11, the following disbursements were improperly charged against plaintiff's IMPL funds:

Agency buildings and repairs	\$ 43.50
Agricultural aid: <u>a/</u>	
Clearing, breaking and fencing land	55.00
Paying of farm laborers	3.50
Seeds, fruit trees and fertilizer	27.00
Automobiles, vehicles, maintenance and repairs <u>b/</u>	896.13
Clothing	262.87
Education	2,171.24
Expenses of Indian delegations	4,829.24

<sup>5/</sup> The categories are those specified in a list in the 1934 GAO Report submitted in the Court of Claims Sioux cases (see GAO Report filed July 12, 1934, in C-531, pp. 946-48), as well as the category of education, discussed in Sioux II at p. 802.

Livestock:	
Purchase of	\$ 550.00
Medical attention:	
Pay and expenses of physicians	79.50
Miscellaneous agency expenses	475.99
Pay and expenses of agricultural extension agents <u>d/</u>	79.50
Pay and expenses of farmers	11.00
Pay of assistants <u>e/</u>	268.00
Pay of clerks <u>c/</u>	29.75
Pay of housekeepers <u>c/</u>	211.50
Pay of laborers <u>e/</u>	56.00
Pay of stenographers <u>e/</u>	9.00
Pay of transcribers <u>e/</u>	100.00
Roads and bridges <u>f/</u>	47.50
Transportation of Indian supplies	<u>7.74</u>
	\$10,213.96

a/ Listed in the 1934 GAO Report as "Agricultural implements" or "agricultural improvements."

b/ Listed in the 1934 GAO Report as "Operation and repairs of automobiles."

c/ Listed in the 1934 GAO Report as "Pay of miscellaneous agency employees."

d/ Listed in the 1934 GAO Report as "Pay of agents."

e/ The 1959 GAO Report, at page 141, states that the records fail to disclose more specific information on these expenditures. The 1934 GAO Report includes similar expenditures for farmers, field matrons, interpreters, watchmen and others.

f/ Listed in the 1934 GAO Report under "Construction of roads, etc."

The only item remaining is \$20 expended as "payment for deprecations." Plaintiff argues that apart from article 5, the expenditures from IMPL funds were not for tribal benefit. We may proceed to trial as to this item. Standing Rock, supra, at 241.

Exception No. 12

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

Exception No. 13

Plaintiff's thirteenth exception is based upon defendant's failure to account for lands reserved for and lands patented to religious organizations pursuant to the act of May 27, 1910, 36 Stat. 440. Plaintiff asserts that in the accounting to 1925 before the Court of Claims in Sioux II, defendant reported dates, land descriptions and acreages of land reserved and patented under the aforementioned act, and that the accounting in this case should contain corresponding information.

Such information was pertinent in Sioux II, but plaintiff has not shown the relevance of such information in this case. See Standing Rock, supra, at 242. The Commission concludes that plaintiff's exception herein is without merit.

Exception No. 14

Plaintiff's fourteenth exception complains that defendant failed to account for lands disposed of after 1925 under the act of May 27, 1910, supra. Plaintiff is entitled to such information. Standing Rock, supra, at 243. The defendant is ordered to furnish information showing acreage and prices of lands disposed of after June 30, 1925, under the aforesaid act, and the amount of acreage, if any, remaining

unsold. Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65, 76 et seq. (1973).

Exception No. 15

Plaintiff's fifteenth exception is based upon the asserted failure of defendant to pay fair rate of interest on the proceeds from the sale of the tribe's land under the act of May 27, 1910, supra. (1959 GAO Report, p. 136). Section 7 of the 1910 act directed that the proceeds, exclusive of fees and commissions, be placed in the Treasury and draw interest at 3% per annum. Plaintiff claims that the three per cent rate of interest was unfair when compared to prevailing market rates. We may proceed to trial as to this issue. Standing Rock, supra, at 243.

Exception No. 16

Plaintiff's sixteenth exception complains that defendant charged the proceeds from the sale and disposition of plaintiff's land with fees and commissions of registers and receivers of defendant's land offices, and failed to show how much was deducted from the proceeds of the land for such fees and commissions. This exception is analogous to exception No. 18 of the accounting claim in Rosebud.

We decided in Rosebud that explanations in the aforesaid disbursement accounts could have been more revealing, but that they are adequate as a beginning to bring the issues into focus. We decided that these issues should be resolved under

Rule 14 of the Rules of Practice (25 C.F.R. §503.14 (1968)), or at trial of the issues in this matter.

Accordingly, this exception will be denied, without prejudice to the plaintiff's rights to serve interrogatories upon the defendant or utilize other discovery devices under the Rules of Practice. If such interrogatories are served upon the defendant they should be specific and the Commission will expect the defendant to make a good faith search of its records or take whatever measures are indicated to furnish the answers. See Blackfeet, supra, at 94-95.

Exception No. 17

Plaintiff complains in its seventeenth exception of expenditures of tribal funds derived from sale of lands, and interest thereon, allegedly contrary to law. Plaintiff states that the GAO Report shows that the sum of \$428,231.50, which includes principal and interest, was derived from the sale of tribal lands under the act of 1910, supra. Out of that sum, \$387,467.47 was disbursed from July 1, 1925, through June 10, 1951, leaving \$40,764.03 in the treasury. The items comprising the total of \$387,467.47 are set forth by defendant in Statement No. 14, GAO Report, pp. 142-43.

Plaintiff raises initially the claim we discussed earlier, under exception 11, that the disbursements were legal obligations of defendant under Article 5 of the 1877 act, supra, and were improperly made from the tribe's trust funds. We discussed that argument above, and determined that plaintiff was correct, at least as to the items listed in defendant's

1934 GAO report as expenditures made by defendant under article 5.

(See footnote 5, above.)

In dealing specifically with exception 17, therefore, we conclude that the following disbursements were improperly charged against tribal funds:

Agency buildings and repairs	\$ 8,297.20
Agricultural aid: <u>a/</u>	
Clearing, breaking and fencing land	1,056.47
Planting and harvesting crops	1,031.60
Prizes for Indians in agricultural work	83.65
Seeds, fruit trees, and fertilizer	44,017.29
Wells and well equipment	242.75
Agricultural implements and equipment	4,392.01
Automobiles, vehicles, maintenance and repairs <u>b/</u>	6,437.54
Clothing	14.85
Education	1,415.76
Expenses of Indian delegations	7,221.31
Funeral expenses <u>c/</u>	685.80
Hardware, glass, oils and paints	129.91
Household equipment and supplies <u>d/</u>	100.62
Indian dwellings <u>e/</u>	7,226.40
Livestock:	
Feed and care of	2,738.36
Purchase of	1,787.25
Maintaining law and order <u>f/</u>	117.35
Medical attention: <u>g/</u>	
Drugs	104.73
Erection and repairs of hospital	197.08
Hospital care	215.00
Pay and expenses of physicians	186.20
Mills and shops: <u>h/</u>	
Erection, repairs, and supplies of blacksmith shops	3.92
Erection, repairs, and supplies of carpenter shops	105.59
Erection, repairs and supplies of saw mills	290.84
Pay of carpenters	802.38

Miscellaneous agency expenses	3,133.92
Miscellaneous building material	6,167.27
Pay and expenses of farmers	865.80
Pay of assistants <u>1/</u>	669.00
Pay of attorneys	6,633.41
Pay of census enumerators	28.80
Pay of housekeepers <u>1/</u>	10.20
Pay of laborers <u>1/</u>	2,349.70
Pay of painters <u>1/</u>	23.80
Pay of plasterers <u>1/</u>	94.71
Pay of plumbers	56.61
Pay of truck drivers <u>1/</u>	996.12
Provisions	8.00
Repairs and installation of telephone line	414.50
Roads and bridges	157.13
Transportation of Indian supplies	2,152.96
	<hr/>
Total:	<u>\$112,663.79</u>

- a/ Listed in the 1934 GAO Report as "Agricultural implements" or "Feed for livestock" and "Seeds for planting."
- b/ Listed in the 1934 GAO Report as "Operation and repair of automobiles."
- c/ 1934 GAO Report lists as "Burial of Indians."
- d/ 1934 GAO Report lists as "Furniture and equipment."
- e/ Listed in 1934 GAO Report under "Construction of buildings other than school houses."
- f/ Listed in 1934 GAO Report as "Indian police."
- g/ Listed in 1934 GAO Report as "Medical equipment and supplies."
- h/ 1934 GAO Report: "Sawmills, gristmills, etc."
- 1/ 1934 GAO Report includes categories such as "Pay of miscellaneous agency employees, agents, farmers, field matrons, watchman, etc."

The 1959 GAO Report also includes "Per capita cash payments" in the total amount of \$199,728.91. Plaintiff interposes no objection to this item.



The only remaining item in the 1959 report is "Reimbursable cash loans", in the amount of \$75,074.77. Plaintiff's objection to this expenditure, contained in part D of the exception, argues that the expenditure was "not for the benefit of the Tribe, or indirectly for the benefit of the Tribe, or jointly for the benefit of the Tribe and purposes of the Government, or where the defendant has failed to furnish adequate information." Plaintiff also refers to Statement 16, Item (d), p. 146 of the 1959 GAO Report, which states that income from "Repayment of reimbursable agreements" is reported as \$124,107.56. Plaintiff asserts that "an obvious question" is raised as to whether the defendant deposited in the plaintiff's 3% fund repayments from loans to individuals out of other tribal funds. We may proceed to trial as to this item. Standing Rock, supra, at 241.

Exception No. 18

This exception is concerned with disbursements of the \$387,467.47 discussed above in exception 17, and complains of defendant's alleged failure to furnish adequate information, and for defendant making expenditures in violation of law and the standards applicable to a trustee-fiduciary relationship.

However, these issues have been disposed of, except as to two categories, pursuant to exception 17. The two categories of disbursements remaining for our consideration are per capita cash payments, in the amount of \$199,728.91, and reimbursable cash loans, in the amount of \$75,074.77.

Plaintiff makes five distinct arguments in exception 18. The first argument questions whether the expenditures were of tribal benefit. This argument was disposed of in our discussion of the seventeenth exception, above.

Plaintiff's second argument concerns delivery of food, clothing or supplies, and is not pertinent to the items remaining under consideration.

Plaintiff's third argument is that the records do not indicate whether items were distributed to Indians in payment for labor performed by the Indians. Such information can be obtained by plaintiff from defendant pursuant to our Rules of Practice. Standing Rock, supra, at 249.

Plaintiff's fourth argument is that there is no indication in the GAO Report of the existence of any credits arising from sale of goods, or refunds, spoilage, etc. This argument is inapplicable to the items remaining under consideration.

Finally, plaintiff argues that defendant must include, in its accounting report, data concerning property purchased by defendant with plaintiff's trust money. This argument is inapplicable to the items remaining under consideration.

#### Future Procedures

As we have indicated in the foregoing discussion, we may proceed to trial as to some or all of exceptions 11, 15 and 17. In the interest of moving this case along, we will schedule a trial as to these exceptions.

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.

In Docket 119, in which the same issues were raised, we ordered the parties to attend a conference before Commissioner Vance, at which they determined what further information should be supplied by defendant and in what form. Defendant will be expected to provide the same supplementary information in this docket as well.

As to exception 14, in which we have determined that defendant is required to furnish additional information, defendant will be ordered to furnish said information within 60 days.

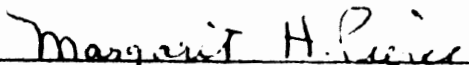
Plaintiff will have 60 days within which to respond to defendant's filing. The nature of this exception is such that when the data is submitted, and after plaintiff has made its amended exception thereto, if any, it is possible that it may be disposed of on motion without the necessity for further trial.

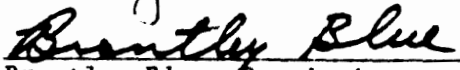
If defendant has not supplied the additional data called for within the prescribed period, the Commission will request plaintiff to submit a claim for damages based on existing evidence. If plaintiff, after receipt of defendant's additional data, has not filed

an amended exception thereto within 60 days, we will entertain a motion for dismissal as to the relevant exceptions.

  
John T. Vance, Commissioner


We concur:

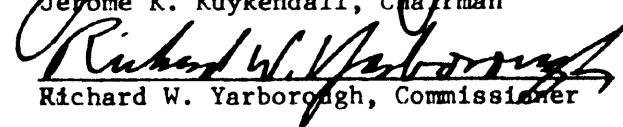
  
Margaret A. Pierce, Commissioner

  
Brantley Blue, Commissioner

Kuykendall, Chairman, and Yarborough, Commissioner, concurring:

We concur as to exception 9 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 plaintiff's 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 are now bound to follow the authority of Te-Moak, supra, in the instant case.

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner