

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE	)	
GOSHUTE RESERVATION SUING ON	)	
ITS OWN BEHALF AND ON BEHALF	)	
OF THE GOSHUTE TRIBE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 326-B
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: February 14, 1974

Appearances:

Wilkinson, Cragun and Barker and  
Frances L. Horn, Attorneys for  
Plaintiff. Charles A. Hobbs  
was on the brief.

Craig A. Decker, with whom was  
Assistant Attorney General, Wallace  
H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

In this accounting proceeding the plaintiff, Confederated Tribes of the Goshute Reservation, filed, on June 27, 1973, exceptions to the accounting report of March 25, 1969, by the General Services Administration submitted by the defendant. The plaintiff also filed, on the same date, a motion to require the defendant to furnish accounting information supplementing that in the GSA accounting report. Defendant filed a response on August 20, 1973, and, on the same date, also filed a motion to dismiss for lack of jurisdiction all matters arising after August 13,

1946, in the absence of a showing of non-severable claims. Plaintiff thereafter responded to the defendant's response and motion on jurisdiction.

In its response, the defendant denied liability by reason of any of plaintiff's exceptions, but, aside from plaintiff's Exception No. 2 requesting an accounting to date, the defendant agreed to supply additional data, if it can be found, on the questions raised by the plaintiff's exceptions. The defendant is requesting further accounting advice as to Exception No. 1 and Exceptions 3 to 10 from the accountants of the General Services Administration. Consequently, the question of jurisdiction, raised in Exception No. 2, is the only matter strictly in issue here. However, to facilitate further action in this proceeding, we shall rule on plaintiff's other exceptions in accordance with recent accounting decisions of the Commission.

Exception No. 1

The Goshutes have been located on two noncontiguous Executive order reservations, namely, the Goshute Reservation in Utah and Nevada, and the Skull Valley Reservation in Utah. In Exception No. 1, plaintiff asserts that the accounting is incomplete in that it covers revenues and disbursements for only a portion of the tribe. Although the accounting report of treaty funds refers to Goshutes located on both the Utah and Nevada Reservation and the separate Skull Valley Reservation, there is nothing in the report accounting for the management of the "Indian Money Proceeds of Labor" fund and other funds and property

of the Goshute Indians of the Skull Valley Reservation in Utah, as distinguished from the Goshutes of the Utah and Nevada Reservation. The defendant will be directed to supplement its report in this respect. (Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65, 90-93 (1973).)

Exception No. 2

The plaintiff asserts in Exception No. 2 that the accounting is incomplete on its face, since the report, completed on March 14, 1966, observes a cut-off date of June 30, 1951. The plaintiff contends that the Commission has jurisdiction of claims based upon causes of action which accrued before August 13, 1946, and continued thereafter.

(Gila River Pima Maricopa Indian Community v. United States, 135 Ct. Cl. 180, 186-7 (1956), 157 Ct. Cl. 941 (1962).) The Commission has held that when it is determined that the defendant was guilty of pre-1946 wrongdoings which have continued beyond August 13, 1946, the defendant will be ordered to supplement its accounting. Where, as here, specific wrongdoing occurring prior to August 13, 1946, is not alleged, a general motion for accounting beyond June 30, 1951, will be denied, without prejudice to the plaintiff's rights to make a further request for accounting beyond August 13, 1946, upon showing specific wrongdoing before that date which is believed to have continued thereafter. (Papago Tribe v. United States, Docket 102, 26 Ind. Cl. Comm. 365, 368 (1971); Navajo Tribe of Indians v. United States, Docket 69 et al., 31 Ind. Cl. Comm. 40, 53 (1973); Blackfeet and Gros Ventre Tribes, supra, at 76.)

Exception No. 3

In Exception No. 3, the plaintiff asserts that the accounting shows improper diversion of treaty funds for which the defendant should make restitution. The plaintiff lists several amounts, totaling \$6,765.94, owing from funds to which the plaintiff was entitled under the Treaty of October 12, 1863 (13 Stat. 681). Part of the amount owing was used for Shoshone Indians other than the Goshutes, or was commingled with funds of other Shoshone bands. Another part was not accounted for by the Indian agent. These facts are not disputed by the defendant. The plaintiff does not request further accounting data under this exception. The motion for supplemental accounting will be denied as to Exception No. 3. It appears to the Commission that with an appropriate motion by either of the parties, this exception is ready for decision. (See Blackfeet and Gros Ventre Tribes, supra.)

Exception No. 4

In Exception No. 4, the plaintiff asserts that the accounting reveals improper expenditure from treaty funds, in the amount of \$5,547.61, for which the defendant should make restitution. Article 7 of the Treaty of October 12, 1863, limits the use of the annuities to be paid thereunder to "such articles, including cattle for herding or other purposes as the President of the United States shall deem suitable for their wants and condition either as hunters or herdsmen." The plaintiff lists some disbursements under the treaty which were used to pay for a number of items, such as miscellaneous agency expenses, that do not seem to come

within the statutory requirement of articles suitable for hunters and herdsmen. The plaintiff does not request further accounting data. The motion for supplemental accounting will be denied as to this exception. It appears to the Commission that unless plaintiff, by appropriate motion, seeks to amend this exception in the light of the decision of the Commission in Blackfeet and Gros Ventre Tribes, supra, this exception is ready for decision.

Exception No. 5

The plaintiff requests in Exception No. 5 supplemental accounting showing the extent to which labor was performed for annuities or goods under the 1863 treaty during the years 1875 and 1882, pursuant to the Act of March 3, 1875 (18 Stat. 449), which required that able-bodied male Indians between the ages of 18 and 45 perform service on the reservation for themselves or the tribe to an amount equal in value to the supplies and annuities delivered. The Commission has recently denied a similar request without prejudice to the plaintiff's rights to use interrogatories or other discovery devices to obtain this information without further order of the Commission. (Blackfeet and Gros Ventre Tribes, supra, at 95; see Commission Rules of Procedure, § 14.) Accordingly, the plaintiff's motion for supplemental accounting 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 Procedure.

Exception No. 6

In Exception No. 6, the plaintiff contends that the defendant's accounting for miscellaneous revenue is inadequate in that it is limited

to revenue from grazing receipts between 1918 and 1940, and "payments on reimbursable agreements." The report contains no accounting of Skull Valley Reservation funds. Neither does it contain information of rights-of-way for railway, telegraph, or telephone lines or for construction or other land uses. The plaintiff requests supplemental information on lands available for grazing leases, dates of leases, acreage, and periods of time involved, and also requests information as to the nature and value of any mineral lands, whether any were leased, and information as to the income from such lands.

The Commission required, in view of indications of mishandling of tribal funds, that the defendant in the Blackfeet case account for receipts of all funds, individual, tribal, and governmental. Where, as here, there has been no charge of mishandling of funds, but data included in the report seem incomplete (e.g. lands were presumably grazed after 1940 though no mention is made of this in the accounting report), the defendant should supply information on tribal receipts, particularly for grazing, mineral, and other land uses as was required in Blackfeet and Gros Ventre Tribes, supra, at 76 et seq., and 92-93. The information about tribal funds should be furnished for both the Skull Valley Reservation and the Goshute Reservation in Utah and Nevada. Plaintiff's motion for supplemental accounting will be granted as to Exception No. 6.

Exception No. 7

Plaintiff asserts in Exception No. 7 that other than the payment

of some interest on plaintiff's IMPL funds, the accounting does not indicate what, if any, action the defendant took to make plaintiff's funds productive. The plaintiff requests information as to the dates when the funds were received, the dates when deposited to plaintiff's accounts, the dates when the funds were removed from plaintiff's accounts to pay obligations, the nature of such obligations, and the dates on which they were paid, the state of the accounts on an annual or other periodic basis so that the interest or return which should have been earned may be calculated, and what investments, if any, were made on behalf of the plaintiff.

In a number of cases, the Commission has required that the defendant disclose the amounts and the periods during which the Government held plaintiff's legally interest-bearing funds out of the Treasury, in order to determine whether its fiduciary obligation to deposit interest-bearing funds within thirty days was satisfied. (See Menominee Tribe v. United States, 107 Ct. Cl. 23 (1946).) This information should be supplied by the defendant in subject case also, as required in Blackfeet and Gros Ventre Tribes, supra, at 88-89. Plaintiff's motion for supplemental accounting will be granted as to Exception No. 7.

Exception No. 8

Plaintiff asserts in Exception No. 8 that the accounting reveals loss of interest through imprudent management, for which the defendant should make restitution.

In Menominee Tribe v. United States, 101 Ct. Cl. 10 (1944), the Court of Claims held that if Indian funds bearing interest or a higher rate of interest were spent when non-interest-bearing funds or funds bearing a lower rate of interest were equally available, the Government was obligated to pay the Indians the interest thereby lost to them. In Exception No. 8 the plaintiffs gave an example of such so-called reverse spending, i.e., expenditures over a period of years from an interest-bearing fund when money from a non-interest-bearing fund could have been used instead. But plaintiff was unable to determine the extent of such reverse spending because the accounting report lists disbursements by years only and the plaintiff believes that it is impossible to determine the amount of interest so lost to plaintiff without an accounting that identifies disbursements by month and day. In Blackfeet and Gros Ventre, supra at 89-90, the Commission denied the plaintiff's request for more information to determine the extent of reverse spending which may have occurred. The denial was based on the ground that information necessary to calculate losses resulting from reverse spending was obtainable from yearly schedules of receipts and expenditures or from published treasury reports. In accordance with the Blackfeet decision, supra at 90, plaintiff's request for supplementary data based on Exception No. 8 is denied.

#### Exception No. 9

In Exception No. 9 the plaintiff asserts that the accounting is deficient in its statement of disbursements, and that the defendant



should supply the meaning and content of the terms and categories used in the report, to clarify whether the ultimate benefit from use of the funds listed was enjoyed by the Indians, by the Government, or by some third party. In Blackfeet and Gros Ventre Tribes, supra, at 84-86, the Commission held that ordinarily, if a plaintiff questions a particular disbursement, his remedy is to except, not to ask that the defendant be compelled to plead again. If the plaintiff is not certain whether the purpose for which an amount was dispersed was properly handled in the accounting, the plaintiff should except and the defendant has the duty of satisfying the Commission of the legality of the challenged item. Plaintiff's motion will be denied, as was a similar motion by the plaintiffs in the Blackfeet case, supra. As to certain of the categories used in the report, it appears to the Commission that with an appropriate motion for an amendment to the present exception, taking into consideration the Commission's decision in Blackfeet and Gros Ventre Tribes, supra, at 104 et seq., this matter will be ready for decision.

Exception No. 10

The plaintiff asserts in Exception 10 that the defendant has submitted no proof that the plaintiff actually received the benefits of the disbursements. The subject accounting report indicates that during the time annuities under the Treaty of October 12, 1863 (13 Stat. 681), were being paid, certain treaty funds were misappropriated by the defendant's agent. (General Services Administration Report Re: Petitions of the Confederated Tribes of the Goshute Reservation, Indian Claims Commission Nos. 326-B and 326-J, 10.) The plaintiff also asserts that

the evidence will show that the same agent submitted false and fraudulent vouchers and charges, and that he sold provisions, ostensibly supplied to plaintiff, to third persons for his own benefit, necessitating that particular care be taken in the instant case regarding disbursement of the 1863 treaty funds. The Commission has required, in response to similar requests by other plaintiffs, that the defendant produce such vouchers, reports, or other proof as may be available showing delivery of goods and performance of other services. (Blackfeet and Gros Ventre Tribes, supra, at 87.) Plaintiff's motion for supplemental accounting will be granted as to Exception No. 10.

The defendant's motion to dismiss for lack of jurisdiction any claims accruing after August 13, 1946, is denied consistent with the Commission's ruling on the same request in Blackfeet and Gros Ventre Tribes, supra, at 71 et seq. The reasons for the ruling are discussed fully in that decision and need not be repeated here.

In sum, subject to any further showing that the defendant may submit in response to plaintiff's exceptions, and in accordance with the opinion herein, the plaintiff's motion for supplemental accounting will be allowed as to Exceptions 1, 6, 7, and 10. Plaintiff's motion as to Exceptions 2, 3, 4, 5, 8, and 9 will be denied, and the defendant's motion to dismiss any claims accruing after August 13, 1946, will be denied. An order to this effect is being issued as of this date. The defendant will be allowed 90 days within which to respond to the order and the

requirements of this opinion. The plaintiff may amend its exceptions within 30 days thereafter.

Margaret H. Pierce  
Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Harbrough  
Richard W. Harbrough, Commissioner

Brantley Blue  
Brantley Blue, Commissioner