

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

(Electronically filed on May 28, 2020)

CHEMEHUEVI INDIAN TRIBE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 16-492L

Judge Matthew H. Solomson

**UNITED STATES' SUPPLEMENTAL BRIEF IN SUPPORT OF
ITS MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

In response to this Court's May 14, 2020 Order, ECF No. 87, the United States provides the following supplemental brief to show the meaningful nature of the Arthur Andersen reconciliation report and to support the United States' Motion to Dismiss Plaintiff's Second Amended Complaint.

1) Description of the Additional Documents in Arthur Andersen Report

The American Trust Management Reform Act of 1994 ("Trust Reform Act") required that the Secretary of the Interior provide timely and accurate reconciliations of tribal trust funds, audit all tribal trust funds annually, and provide periodic statements of performance for the tribal trust fund assets beginning in 1995 on a prospective basis. Pub. L. No. 103-412, 108 Stat. 4239, codified as 25 U.S.C. §§ 4001-4061. Interior satisfied its obligation to reconcile trust fund accounts by implementing procedures that accomplished five goals: (1) verify that transactions posted to Bureau of Indian Affairs' ("BIA") accounting records agreed with supporting documentation, such as receipts, disbursement authorizations, leases or sale agreements, permits, and contracts; (2) assess the reasonableness of posted investment income; (3) assess the

reasonableness of U.S. Treasury interest calculations; (4) determine the timeliness of the deposit of receipts; and (5) reconcile BIA's investment and tribal trust fund balances.

For the Chemehuevi Tribe, the approximately 6000 images of supporting financial records are organized for each transaction identified in the Arthur Andersen Report ("Report"). The Report provided Plaintiff, among other things, a transaction-by-transaction account statement (i.e., a detailed list of each separate ledger entry) of tribal trust fund accounts from July 1, 1972 to September 30, 1992, income vouchers, disbursement records, deposit tickets, receipts for bills collected, and investment records. *See* Exs. 1-7. Each transaction packet contained a coversheet on the degree of reconciliation for the subject transaction, and the supporting records authorizing the transaction and executing the movement of funds were attached. *See, e.g.*, Ex. 1. The Report also included presentations, informational meeting announcements, letters, and explanations by Arthur Andersen or the government explaining the reconciliation and the steps that Arthur Andersen took. *See* Exs. 8-10.

In this case, the Report, which commenced with account balances in 1972, was particularly well-suited to the history of the Chemehuevi Tribe because it was not formally organized or federally recognized until 1970.¹ Except for the Metropolitan Water District ("MWD") and Indian Claims Commission ("ICC") payments, the Tribe had little financial activity prior to 1972. Plaintiff was provided the records to easily track when payments were made, how long they sat in Plaintiff's account, and how much interest accrued until MWD payment was spent or the ICC payments were disbursed. *See* Ex. 1 (showing per capita payments of the ICC funds to adult enrollees and minors trust funds). Furthermore, although the

¹ The Tribe also received Annual Combined Receipts, Expenditures and Fund Balance Reports of the United States Department of the Treasury for the Fiscal Years 1946 to 1972. *See* Ltr. from DOJ to Pl.'s Counsel, ECF No. 86-1.

Report covered the period of 1972 to 1992, Plaintiff sought and the United States delivered additional financial records related to the Tribe's ICC judgment funds and records related to tribal accounts from 1992 to 1995. *See* Ex. 6.

2) When the United States Provided the Arthur Andersen Report

Plaintiff received its Report on January 18, 1996.² *See* Federal Express record, ECF No. 7-4. Plaintiff acknowledged receipt of the Report on February 9, 1996. *See* Acknowledgement, ECF No. 56-3. Additionally, Arthur Andersen and the Office of Trust Fund Management ("OTFM") met with Tribes in Albuquerque and again provided the complete reports, gave presentations on the materials, and held individual meetings with Tribes, including Plaintiff, to review their reports, answer questions, and document issues for follow-up. *See* Ex. 10.

3) The Significance of the Arthur Andersen Report

The Report included summary records, the raw account data, Arthur Andersen's work papers from the reconciliation, and an interactive process by which OTFM and Arthur Andersen reviewed materials with Plaintiff, answered Plaintiff's questions about its accounts, and provided follow-up materials to respond to inquiries about Plaintiff's funds. Thus, the United States provided a "meaningful accounting" as the phrase was used in *Shoshone Indian Tribe v. United States*, 364 F.3d 1339 (Fed. Cir. 2004).

Shoshone does not directly define what constitutes a meaningful accounting. However, the standard adopted by the Federal Circuit, taken from Pub. L. No. 108-7 (2003), was an accounting "from which the Tribes can discern whether any losses occurred which would give rise to a cause of action against the trustee." *Id.* at 1346. The thousands of pages of financial

² This same information was also provided to Plaintiff on May 3, 2016, and May 12, 2020. *See* Pl.'s Status Report, ECF No. 86.

documents included with the Report provided Plaintiff with information on deposits, transfers, authorizations, interest earned, and disbursements. Plaintiff was provided with information on where its money came from and what was done with it. *See generally* Exs. 1-10. Plaintiff was also given opportunities to ask additional questions and obtain supplementary records in 1996. *See Wolfchild v. United States*, 731 F.3d 1280, 1291 (Fed. Cir. 2013) (finding that statute of limitations is not tolled where the plaintiff has notice of its claim, even if the Plaintiff did not receive an accounting). Significantly, the question in this case is not whether Plaintiff could determine if there was simply *any* loss to its trust funds but whether Plaintiff could determine there was a loss to its trust funds as it relates to the specific claims Plaintiff filed here—(1) accounting and damages for mismanagement of Parker Dam compensation monies; (2) accounting and damages for ICC judgment funds for Dockets 351 and 351-A; (3) uncompensated taking and mismanagement of tribal water rights; (4) accounting and damages for mismanagement of shoreline and suspense accounts; and (5) “1992 [sic] Arthur Andersen Report failed to meet the government’s statutory obligation to provide the Chemehuevi Tribe with an accounting of the Tribe’s trust funds.” Plaintiff does not allege a claim of general trust fund mismanagement. *See* ECF Nos. 51, 79.

The United States is a statutory trustee, and its accounting obligations are wholly defined by sections 4011 and 4044 of the Trust Reform Act. *See Fletcher v. United States*, 730 F.3d 1206, 1209-10 (10th Cir. 2013). By providing the Report, including the supporting financial materials, and responding to inquiries, the United States satisfied its statutory accounting obligation.

4) Court Decision Identifying an Independent, Money-Mandating Fiduciary Duty

The United States is aware of no decision that squarely addresses an independent, money-mandating fiduciary duty to provide Plaintiff an accounting. As the United States set forth in its briefing, the duty to account is not money-mandating, so this Court does not have jurisdiction for an equitable claim for a general accounting. *See* ECF No. 56-1 at 43-44. In response to the Court's Order to identify one decision which best articulates the party's view on the subject, the United States relies on *Klamath & Modoc Tribes v. United States*, 174 Ct. Cl. 483, 487-88 (1966), that recognized that a claim for a general accounting was outside the court's jurisdiction. "It is fundamental that an action for accounting is an equitable claim and that courts of equity have original jurisdiction to compel an accounting." *Id.* at 487. This Court's "general jurisdiction under the Tucker Act does not include actions in equity." *Id.* (citations omitted). In *Klamath*, the court recognized that express language was needed to authorize a monetary claim for an accounting in the Court of Claims, like the kind of language contained in special jurisdictional acts and in the Indian Claims Commission Act for pre-1946 wrongs. *Id.* at 488. That language does not appear in 28 U.S.C. §§ 1491 and 1505. *Id.* "To require the Government *ab initio* to render a general accounting on the basis of unproved allegations and before its liability is determined would convert this proceeding from a suit for money damages to an independent equitable action for a general accounting." *Id.* at 491. Thus, the claim for a general accounting is not money-mandating and should be dismissed by this Court.

Respectfully submitted, this 28th day of May, 2020.

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