

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

LOWER BRULE SIOUX TRIBE, a federally  
recognized Indian Tribe,

Plaintiff,

v.

HON. DEB HAALAND, Secretary, United  
States Department of the Interior, or her  
successor in office; the UNITED STATES  
DEPARTMENT OF INTERIOR; BRYAN  
NEWLAND, Assistant Secretary of the  
Interior for Indian Affairs, or his successor in  
office; DARRYL LACOUNTE, Director of  
the Bureau of Indian Affairs; THE UNITED  
STATES BUREAU OF INDIAN AFFAIRS;  
KRISSANNE STEVENS, or her successor,  
Awarding Official for the Bureau of Indian  
Affairs Great Plains Region; and THE  
UNITED STATES OF AMERICA.

Defendants.

3:21-CV-03018-RAL

**REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Defendants submit the following reply brief in support of their motion for summary judgment. Summary judgment should be granted in favor of Defendants because there are no material facts at issue in this case. The only “disputed fact” identified by the Tribe is the validity of their “prior period adjustment,” which was retroactively applied by the Tribe to its 2020 audit resulting in a changed balance subject to collection. This self-serving, “disputed fact” is incorrect as a matter of law. Summary judgment should be granted.

## 1. The FY 2017 debt was final and conclusive.

It is undisputed that the Tribe did not contest or appeal the findings in the FY 2017 Report. (Doc. 62 at ¶¶ 11-15; Doc. 73 at ¶ 11-15.) It is also undisputed that the un-appealed FY 2017 Report questioned costs in the amount of \$3,679,223. (*Ibid.*) As a result, and pursuant to the Contracts Disputes Act (“CDA”), the FY 2017 Report and associated debt became “final and conclusive.” *See* 41 U.S.C. § 7103(g). Collections were instituted, and there currently remains a debt balance of \$1,013,873.36 in principal left on the FY 2017 debt:

Customer name		6000000741 LOWER BRULE SIOUX TRIBE										
St	Reference	Inv. ref.	DocumentNo	Rev. with	Typ	Doc. Date	Pstng Date	Clrng doc.	LC amnt	Arrear	RCd	Text
●	DC17-6175	1801914086	1801914086		DR	06/10/2020	06/10/2020		3,679,223.00	456	TOC	CSNG 13814456 Lower-2017-6175
●	91348596	1801914086	1405226317		DU	04/01/2021	04/06/2021		421,711.93-	221	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
■	91349591	1801914086	1405091261	1405394248	DU	05/06/2021	05/10/2021	1405394248	1,368,487.74-	48	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91350374	1801914086	1404064857		DU	06/03/2021	06/07/2021		57,403.84-	158	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91350614	1801914086	1405389324		DU	06/10/2021	06/14/2021		2,294.67-	151	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
■	91350774	1405394248	1405394248	1405091261	DU	06/17/2021	06/23/2021	1405394248	1,368,487.74	48	TOC	CSNG 13814456 Lower-2017-6175 TR pull back funds
●	91351154	1801914086	1405381246		DU	07/01/2021	07/07/2021		715,332.77-	130	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91351376	1801914086	1405416998		DU	07/08/2021	07/12/2021		33,462.71-	123	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91352168	1801914086	1405380345		DU	08/05/2021	08/09/2021		51,541.56-	95	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91352406	1801914086	1405528113		DU	08/12/2021	08/24/2021		1,399.87-	88	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91352632	1801914086	1405497808		DU	08/19/2021	08/25/2021		7,180.87-	81	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91352983	1801914086	1405286636		DU	09/02/2021	09/08/2021		1,257,408.70-	67	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91353213	1801914086	1405466509		DU	09/09/2021	09/10/2021		4,901.07-	60	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91353449	1801914086	1405570210		DU	09/16/2021	09/20/2021		150.17-	53	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91353920	1801914086	1405571940		DU	10/07/2021	10/14/2021		61,693.60-	32	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91354382	1801914086	1405634959		DU	10/21/2021	10/25/2021		23,909.67-	18	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
●	91354734	1801914086	1405530252		DU	11/04/2021	11/05/2021		26,958.21-	4	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
*									1,013,873.36			

(Doc. 62 at ¶¶ 21, 23-24, Fletcher Decl., Exh. 1, tab 3 (“DC17 Bill Recon”).)

## 2. The Tribe cannot change the debt owed after it became final.

In its response brief, and throughout this litigation, the Tribe’s *singular* rationale for its over-collection claim is its purported ability to change the FY 2017 debt with a “prior period adjustment.” (Doc. 62 at ¶¶ 43-49; Doc. 73 at ¶¶ 43-49; Doc. 75 at ¶¶ 1-3; Doc. 76 at 3-5.) This rationale is legally flawed for several reasons.

First, and as outlined at length in Defendants’ initial brief, the ISDEAA requires the BIA/DOI to issue findings on disallowed costs (with appeal rights) within one year of receiving the Tribe’s audit report. *See* 25 U.S.C. § 5305(f); 25 U.S.C. § 5325(f). The Tribe’s position, if

accepted, would essentially render this provision meaningless because a tribe could unilaterally change a finding by submitting an audit report with different financial figures in the subsequent year(s) as an end-run around the appeals process. And relatedly, per the Disallowed Costs Section of the 2016 BIA Single Audit Handbook, only the awarding official can amend or change a Findings and Determinations. (See Supplemental Declaration of Krissanne R. Stevens in Support of Defendants’ Motion for Summary Judgment ¶ 3, Exh. 10) [hereinafter “Supp. Decl.”] The Tribe’s assertion that it could subsequently change the debt owed with this retroactively applied “prior period adjustment” is legally unsound and practically unworkable. Finding otherwise would create a never-ending cycle of revisiting prior years’ findings and disallowed costs.

Additionally, for each fiscal year in which a tribal organization receives or expends funds pursuant to an ISDEAA contract or TCSA grant, the tribal organization must submit a single-agency audit report. 25 U.S.C. §§ 2507(a)(1) and 5305(f). The audit must be “conducted by an independent auditor in accordance with generally accepted government auditing standards” and submitted to the appropriate agency. 31 U.S.C. § 7502(c). Pursuant to the Single Audit Act, the tribal organization submits a reporting package, including the auditor’s report, to a Federal clearinghouse. 31 U.S.C. § 7502(h). The designated agency is then required to “assess the quality of the audit[] conducted[.]” 31 U.S.C. § 7504(a)(2). The respective secretary must give notice as to disallowance of costs within three hundred and sixty-five (365) days of receipt of the annual single-agency audit report. 25 U.S.C. §§ 2507(a)(8) and 5325(f). The Awarding Official then issues a written decision—labeled a Findings and Determinations Memorandum—as to “whether the audit findings have been addressed satisfactorily and whether questioned costs have been disallowed (sustained) or reinstated (allowed).” *Id.* p. 1, F. If a questioned cost is “disallowed” then the Awarding Official issues a formal notice letter, attaching a copy of the Findings &

Determinations. *Id.* p. 3, 3(b). Using the Tribe's rationale, the above-outlined audit process would be meaningless because a Tribe could simply adjust, decrease, or fluctuate its deferred revenue balances in the subsequent years' audits and nullify any Findings and Determinations made by the Awarding Official without having to file an appeal under the CDA.

Further, any argument by the Tribe that the amount of debt from the report should have been fixed at the time collections began, instead of on the date the FY 2017 Report was issued, is equally untenable. The statutory language—and purpose—of the ISDEAA, TCSA, CDA, and Single Audit Act preclude the Tribe's claim.

Finally, the Tribe failed to cite any provisions of the ISDEAA, TCSA, CDA, Single Audit Act—or any other law—which purportedly support its argument. For example, in the Tribe's response brief, the Tribe states, without support:

Contrary to Defendants' assertion, the Tribe's argument in this matter is not inconsistent with the statutory language and purpose of the ISDEAA, TCSA, CDA, or the Single Audit Act. Doc. 63 at p. 16. Those acts do not preclude a grant recipient subject to the Single Audit Act from making prior period adjustments that result in revisions of the previous audit calculations. Nor do those acts prohibit the recipient from submitting audits in subsequent years that reflect a change in the entity's financial circumstances. . . . [S]uch adjustments should compel an awarding official to modify any corrective action so that it more accurately reflects the latest available audit findings.

(Doc. 76 at 3.) The Tribe does not—because it cannot—provide any support for its position that it could subsequently, and unilaterally, make this prior period adjustment. The Tribe's arguments have no basis in law. Accepting the Tribe's position would wholly contradict and legally pervert the ISDEAA, CDA, and Single Audit Act.

**3. The Tribe does not dispute the amount of questioned costs or the amount that has been offset.**

The Tribe does not dispute the \$3,679,223 in questioned costs, nor does it dispute the number of offsets performed to satisfy the debt. In discovery, the Tribe provided the following

spreadsheet wherein the principal amount (highlighted in the red box below) exactly matches the government's accounting records:

Lower Brule Sioux Tribe  
Analysis of Deferred Revenue-Treasury Offset  
November 1, 2022

Date	Description	Amounts	Principal Amounts
3/20/2019	FY17 Findings & Determinations	\$ 3,679,223.00	\$ 3,679,223.00
11/8/2019	FY18 Findings & Determinations	\$ 3,552,860.00	\$ 3,552,860.00
6/15/2021	FY18 F&D Duplicate-Payments Transferred to FY17 F&D	\$ (3,552,860.00)	\$ (3,552,860.00)
10/19/2021	Total Collected through Treasury Offset	\$ (4,504,262.20)	\$ (4,033,837.38)
2/28/2022	IHS Offset Refunded	\$ 1,400,218.00	\$ 1,368,487.74
		\$ 575,178.80	\$ 1,013,873.36

	Principal Amounts	Interest on Principal Overcollected	Penalty on Principal Overcollected	TOP Fee on Principal Overcollected	Total Overcollected
FY20 Findings & Determinations	\$ 1,981,756.00	\$ -	\$ -	\$ -	\$ 1,981,756.00
Total Collected through Treasury Offset	\$ (4,033,837.38)	\$ (6,105.92)	\$ (10,037.16)	\$ (103.81)	\$ (4,050,084.27)
IHS Offset Refunded	\$ 1,368,487.74	\$ -	\$ -	\$ -	\$ 1,368,487.74
Amount Overcollected	\$ (683,593.64)	\$ (6,105.92)	\$ (10,037.16)	\$ (103.81)	\$ (699,840.53)

Amounts Offset in Error-Health Services Funds \$ 1,578,446.00

(Doc. 66 at ¶ 3, Exh. 1.) When questioned about this, the Tribe seemingly admitted that only *if* the prior period adjustment is taken into account—which is legally unsound—will the balance reflect an overcollection. In other words, if the prior period adjustment is not applied, the Tribe's balance sheets are identical to the government's accounting records, which reflect a \$1,013,873.36 balance still owed by the Tribe.

**4. The payment restriction letter and date the bill of collection issued are red herrings.**

In its response brief, the Tribe states:

Since the Findings and Determinations for fiscal year 2017 informed the Tribe that they would be subject to a payment restriction letter—which decision the Tribe did not appeal—the Tribe had no reason to know that a Bill of Collection would later issue. *Doc. 63* at pp. 6-9. Defendants waited until March 30, 2020, the last possible day that the Tribe could have appealed the FY 2017 Findings and Determinations, to request a Bill of Collection. *Id.* at pp. 7-8.”

(Doc. 76 at 2-3.) The Tribe's reference to a payment restriction letter and the issuance date of the bill of collection are red herrings and irrelevant to the single issue of alleged overcollection, and the legality of the prior period adjustment, that is now before the Court.

Per the Process and Disallowed Costs Sections of the 2016 BIA Single Audit Handbook, the BIA requests bills of collection regardless of whether a Tribe is placed on payment restrictions, formal or informal, where the Findings and Determinations sustain questioned costs unless (1) the Tribe has provided the Self-Determination Officer with information so that the Self-Determination Officer may amend the Findings and Determinations, or (2) the Tribe has repaid or entered into a payment plan to repay the questioned costs identified in the Findings and Determinations. (Supp. Decl. ¶ 4, Exh. 10.) Here, neither of these exceptions applied—after receiving the 2017 Findings and Determinations, Debra Nies, the Tribal Comptroller, responded on behalf of the Tribe that “[t]here is no disagreement with this finding. The Tribe’s management is working towards rectifying the continued overspending of funds that result in the deficient fund balances. Management will strive to maintain the funds for federal programs in the restricted savings account and transfer as needed to cover expenditures,” (Doc. 62 at ¶ 14); and, after the Bill of Collection issued, the DOI had to issue a late notice (*i.e.*, 1<sup>st</sup> Dunning Notice) because payment on the FY 2017 debt had not been received. (*Id.* at ¶¶ 19-20.)

Neither the payment restriction letter, nor the bill of collection, had anything to do with the FY 2017 Findings and Determinations, which were issued to the Tribe, un-appealed, and then became “final and conclusive.”

### **CONCLUSION**

For the reasons stated in Defendants’ initial brief in support of summary judgment, as well as those contained herein, Defendants’ Motion for Summary Judgment should be granted.

The Tribe’s accounting and reasoning on its overcollection claim is incorrect as a matter of law. The financial record in this case, and the laws which support it, reflect that the Tribe still owes \$1,013,873.36 in principal on its FY 2017 debt to the United States. The Tribe has presented

no evidence that justifies its position that the debt fluctuated based on the Tribe's subsequent years' financial statements and the retroactive "prior period adjustments" that it applied in FY 2020. The Tribe failed to depose anyone from the DIEA and/or Accounting Operations Division Indian Affairs to controvert these facts, and it failed to cite to any law which supports its position. As such, the undisputed—and uncontroverted—fact remains that the DOI has not over collected on the debt created by the FY 2017 Report, and the Tribe still owes \$1,013,873.36 in principal on the FY 2017 debt.

Summary judgment should be granted and the Tribe's Amended Complaint should be dismissed.

Dated this 15th day of January, 2025.

ALISON J. RAMSDELL  
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