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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA,
GREAT FALLS DIVISION**

BLACKFEET HOUSING,

Plaintiff,

v.

UNITED STATES OF AMERICA, by
and through the Bureau of Indian
Affairs,

Defendant.

CAUSE NO. _____

COMPLAINT

COMPLAINT

(Negligence; Breach of Fiduciary Duty)

Plaintiff, Blackfeet Housing ("Plaintiff" or "Blackfeet Housing")

alleges:

JURISDICTION AND VENUE

1. Blackfeet Housing filed, on October 25, 2012, an administrative

claim with the Bureau of Indian Affairs, Blackfeet Agency, alleging negligence under the Federal Tort Claim Act. This filing was done pursuant to 28 U.S.C. § 2675. The Agency filed a response on April 26, 2013. Accordingly, this action is now properly before this court pursuant to 28 U.S.C. §2401 (b).

2. The United States District Court for the District of Montana has jurisdiction over this matter pursuant to 28 U.S.C. §1346(b), which provides for exclusive jurisdiction to the District court over civil actions on claims against the United States for money damages for personal injury.

3. Venue lies in this Court pursuant to 28 U.S.C. §1402(b) because the incident that is the subject of this lawsuit occurred in this judicial district.

PARTIES

4. Plaintiff Blackfeet Housing is an entity owned by the Blackfeet Tribe. The Blackfeet Tribe is a sovereign Indian tribe and is recognized as such by the United States. The Blackfeet Tribe occupies the Blackfeet Reservation of Montana and is the legal successor in interest to the Indian signatories of the Treaty of Fort Laramie, October 17, 1855, 11 Stat. 657. The Reservation was subsequently modified by statute and Executive Orders. See Act of April 15, 1874, 18 Stt. 28; Executive Order of July 5, 1873,

1 Kappler 855; Executive Order of August 19, 1874, 18 Stat. 28; Executive order of July 5, 1873, 1 Kappler 856; Executive Order of July 13, 1880, 1 Kappler 856. The boundaries were further modified by agreements between the Tribe and the United States which were ratified by Congress: Agreements of December 28, 1886 and January 21, 1887, ratified May 1, 1888, 25 Stat. 113; Agreement of September 26, 1895, ratified June 10, 1896, 29 Stat 353.

5. Defendant United States of America, acting by and through the Bureau of Indian Affairs, is charged by law with the duties and obligations of a fiduciary in the management and administration of the Blackfeet Housing's trust property, housing and resources.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

6. Plaintiff is the beneficial owner of over 800 rental homes located primarily in Browning, Montana. These homes are rental units and are occupied by tribal members. The homes that are the subject of this lawsuit are located south of Highway 2. It is Blackfeet Housing's information and belief that the maintenance of the storm drains is the responsibility of the Bureau of Indian Affairs. It is Blackfeet Housing's information and belief that the Bureau of Indian Affairs' roads in front of the homes are on portions of BIA routes and further downstream storm water conveyances.

7. Defendant has historically exercised, and continues to exercise, comprehensive statutory and regulatory control over the storm drains on the Blackfeet Reservation built on land held in trust for the benefit of Plaintiff.

8. Under long-standing Constitutional, statutory and federal common law, and based upon the historic relationship between Defendant and Indian tribes, and Defendant's assumption of the obligations and duties of a trustee by establishing and maintaining comprehensive regulatory control of tribal trust lands and resources, Defendant owes a fiduciary duty to Plaintiff with regard to Plaintiff's storm drains. *United States v. Mitchell*, 463 U.S. 206 (1983). In the exercise of that duty, defendant is to be held to the "most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

9. During the winter of 2011, the Blackfeet Indian Reservation had significant snowfall. The streets in Browning were covered with snow, and huge snow banks were created from plowing. In June of 2011, Browning also had significant rainfall. Given the unusual amount of precipitation, Blackfeet Housing had many rental units with a significant amount of water in the basements. In order to address the magnitude of this problem, Blackfeet Housing sent an engineer to look at the homes and determine the reason for the flooded crawl spaces. He discovered that the storm drains were clogged, the water had nowhere to go, and as a result, the water was backing up into the

homes. The water in some of the homes filled the entire crawl space. The result was significant damage to the structure of the unit.

10. Each year after the snow melt and spring storm, the neighborhood flooding will continue to increase in frequency, duration, and intensity until storm drain systems are cleaned and repaired.

11. The storm drain and catch basic cleaning and repair is now well beyond the scope of routine maintenance.

12. Repair of residence flood damages is well beyond the scope of routine Blackfeet Housing house maintenance.

**FIRST CLAIM FOR RELIEF
(Negligence)**

13. Plaintiff realleges and incorporates by reference as though fully set forth herein each and every allegation set forth in Paragraphs 1 through 12 above.

14. As a public authority, the BIA is responsible for the maintenance and improvement of BIA roads and related structures in the as built condition. The Defendant, Bureau of Indian Affairs, was negligent in that it failed to properly operate and maintain the storm water collection and conveyance system and respond to annual emergency flood events.

15. The Defendant is responsible for maintaining the streets and storm drains along BIA routes. Periodic maintenance is required to insure free flow of storm drain flows. This has not occurred. The storm drains have not been maintained for years, if at all. The failure to maintain these storm drains has resulted in damages to Blackfeet Housing property.

**SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty)**

16. Plaintiff realleges and incorporates by reference as though fully set forth herein each and every allegation set forth in Paragraphs 1 through 15 above.

17. The Federal Government has a trust obligation to the Blackfeet Tribe.

18. This trust obligation requires that the Federal Government provide decent, safe, and sanitary housing to the Blackfeet Tribe.

19. Defendant materially breached its trust responsibility to plaintiff in one or more of the following particulars:

A. In failing in its responsibility to maintain and conserve the trust property in the statutory common-law duty of a trustee to preserve and maintain trust assets.

B. In failing to implement effective policies and regulations to clear storm drains along BIA routes.

20. As a result of defendant's breaches, plaintiff has been damaged in an amount not less than \$1,285,200, or in an amount to be determined at trial.

WHEREFORE, Plaintiff prays that this Court finds the following:

1. For judgment in an amount to be determined at trial;
2. Plaintiff's prejudgment interest, costs and attorney fees in this litigation as may be provided by law; and
3. Such other relief as the Court deems equitable and just.

DATED this 13th day of September 2013.

/s/ Terryl T. Matt
TERRYL T. MATT
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

BLACKFEET HOUSING,

Plaintiff,

v.

UNITED STATES OF AMERICA, by
and through the Bureau of Indian
Affairs,

Defendant.

CAUSE NO. _____

SUMMONS

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MONTANA**

UNITED STATES ATTORNEY FOR GREAT FALLS DIVISION MONTANA

YOU ARE HEREBY SERVED WITH NOTICE OF a Complaint filed against you in the United States District Court. You now have sixty (60) days from the date of service to file a written answer to said Complaint, which is on file in this Court. If you do not respond within sixty (60) days, Petitioner will take judgment against you, as asked for.

WITNESS MY HAND AND SEAL OF THE UNITED STATES DISTRICT

COURT MONTANA DIVISION THIS ____ DAY OF SEPTEMBER 2013.

CLERK

MATT LAW OFFICES, PLLC
TERRYL T. MATT, Esq.
Attorney at Law
310 East Main
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS BLACKFEET HOUSING</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Terryl T. Matt Matt Law Office, PLLC 406-873-4833 310 East Main, Cut Bank, MT 59427</p>	<p>DEFENDANTS UNITED STATES, by through BUREAU OF INDIAN AFFAIRS</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6																	

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input checked="" type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation

I. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1346(b)

Brief description of cause:
Negligence

II. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

III. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____

DOCKET NUMBER _____

TE **9-13-13**

OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____