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Attorneys for Plaintiffs

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

Glacier Electric Cooperative, Inc., Brian)
Elliott, Willard Hjartarson, Jim Newman,)
Darrol Berkrarn, Zita Bremner, Miles Lewis,)
Dave Losing, and James Taylor, in their)
official capacities as directors of Glacier)
Electric Cooperative, Inc., and Dan Brewer,)
in his official capacity as Interim General)
Manager of Glacier Electric Cooperative,)
Inc.,)

Plaintiffs,)

v.)

**CAUSE NO. 4:14-CV-
00075-BMM**

**PLAINTIFFS' BRIEF IN
SUPPORT OF RULE 60(b)
MOTION**

Floyd "Bob" Gervais, James Kittson, Scott)
 Smith, Emerald "Beep" Grant, Suzie Murray,)
 Tashina McNabb, William Guardipee, Fred)
 Guardipee, Heather Juneau, Joseph)
 Arrowtop, William Wetzal, Troy Wilson,)
 Melissa Gervais, Wilfred DeRoche, Georgia)
 Matt, Rodney "Minnow" Gervais, Ralph)
 Johnson, Mike Kittson, Kathy Broere,)
 Lenore Matt, Evie Birdrattler, Rodney)
 Gervais, Duane Ladd, Marcella Birdrattler,)
 Tom Gervais, Jim Gervais, Marlene Matt,)
 Wilfred DeRoche, Titus Upham, John)
 DeRoche, Carl Evans, Jeri J. Elliott, Dennis)
 Juneau, Teri Ann DeRoche, Paul McEvers,)
 Patricia Calflooking, Tony Carlson, Sarah)
 Calf Boss Ribs, Kathy Gervais, Marcella)
 Green, Ellen Burdeau, Randy Augare,)
 Robert Wagner, Kenny Walter, Honey)
 Davis, Anna Horn, Cheryl Gervais, Anita)
 Potts, Therese Salois, Faith Gervais, and the)
 Honorable Chief Judge Dave Gordon,)
)
 Defendants.)

Plaintiffs seek relief from the Court’s April 24, 2015 Order Granting Defendants’ Motion to Dismiss (Doc. 10) (“Order”), pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Plaintiffs respectfully submit that the Court’s Order was based on mistakes of law because the Order: (1) does not address and apply the Blackfeet Tribal Code, (2) cites to legal precedent that does not apply, (3) concludes that the two *Montana* exceptions are satisfied, and (4) does not apply a specific standard of review to Defendants’ Motion to Dismiss. For these reasons, Plaintiffs respectfully request the Court grant their Rule 60(b) Motion.

BACKGROUND

On or about August 6, 2014, Defendants filed a Verified Complaint and Jury Demand in the Blackfeet Tribal Court (“Tribal Court”) in and for the Blackfeet Indian Reservation, Cause No. 2014 CA 107 (the “Lawsuit”). (Doc. 1-2). In the Lawsuit, Defendants seek an order from the Tribal Court generally requiring reform of member voting rights and corporate procedures of Glacier Electric Cooperative, Inc. (“Glacier Electric”), removal of Trustees from the Glacier Electric Board of Trustees, and the prohibition of certain individuals from serving on the Board of Trustees of Glacier Electric. (*Id.*) Defendants also seek damages for alleged breach of fiduciary duty, breach of contract, and improper use of property and request punitive damages, expenses and attorney fees. (*Id.*)

On October 17, 2014, Plaintiffs filed a Complaint for Declaratory Relief and Injunctive Relief with this Court. (Doc. 1). Plaintiffs assert that the Tribal Court lacks jurisdiction over the Lawsuit because the Tribal Court, and Blackfeet Tribe, lack subject matter and personal jurisdiction over Plaintiffs. (*Id.*) On December 22, 2014, Defendants filed a Motion to Dismiss and Brief in Support, asking the Court to dismiss the case because Plaintiffs allegedly failed to exhaust all available tribal court remedies before filing their lawsuit in federal court. (Doc. 3). On January 22, 2015, Plaintiffs filed their Brief in Opposition to Defendants’ Motion to Dismiss, explaining that Plaintiffs were not required to exhaust tribal court

remedies because the Tribal Court plainly lacks jurisdiction over the matter. (Doc. 6). On February 27, 2015, Defendants filed their Reply Brief. (Doc. 9). On April 24, 2015, the Court granted Defendants' Motion to Dismiss and dismissed the case without prejudice for failure to exhaust tribal court remedies. (Doc. 10). Subsequently, on or about May 26, 2015, the Tribal Court found that it had jurisdiction over the matter. *See* Ex 1, Tribal Court Order.

LEGAL STANDARD

Under Fed. R. Civ. P. 60(b)(1), on motion and just terms, the court may relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), Fed. R. Civ. P., permits relief when the district court has made a substantive error of law or fact in its judgment or order. *See Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999); *Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 441 (9th Cir. 1982); *see also Utah ex rel. Div. of Forestry, Fire & State Lands v. U.S.*, 528 F.3d 712, 722-23 (10th Cir. 2008). The basis for a Rule 60(b) motion is to allow a district court to correct an error. *See Gila River Ranch, Inc. v. U.S.*, 368 F.2d 354, 357 (9th Cir. 1966). Plaintiffs respectfully request the Court grant their Rule 60(b) Motion because the Court's Order contains mistakes of law and fact.

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DISCUSSION

I. There Is No Tribal Court Jurisdiction Under The Blackfeet Tribal Code.

In its Order, the Court recognized that tribal courts are not courts of general jurisdiction. (Doc. 10, p. 5). The Court found that the tribal court plaintiffs – the Defendants in this case – are Blackfeet tribal members subject to the Blackfeet Tribal Court’s jurisdiction. (*Id.*) The Court also found that Glacier Electric does not qualify as a tribally-owned entity. (*Id.*, p. 6). Because Glacier Electric is not an Indian for purposes of tribal court jurisdiction, the Court concluded that “[i]t does not appear that the Cooperative Members possess a colorable claim of tribal court jurisdiction based on the membership status of the parties.” (*Id.*)

Plaintiffs respectfully submit that Plaintiffs are not subject to Tribal Court jurisdiction because the Blackfeet Tribal Code specifically provides that the Blackfeet Tribal Court does not have jurisdiction over non-Indians:

The Blackfeet Tribal Court has jurisdiction over all persons of Indian descent who are members of the Blackfeet Tribe of Montana and over all other American Indians unless its authority is restricted by an Order of the Secretary of the Interior. **The Court does not have jurisdiction over non-Indians or over Indians from Canada.**

Blackfeet Tribal Law and Order Code, Chap. 1, Sec. 1 (emphasis added). Glacier Electric is not an Indian or member of the Blackfeet Tribe and is not a tribal entity. As a result, the Tribal Court does not have jurisdiction over Glacier Electric or its Board.

Federal case law cannot and does not bestow jurisdiction on a tribal court when the Tribe's own law indicates there is no jurisdiction. Pursuant to the Blackfeet Tribal Code, any ordinances or customs of the Tribe, not prohibited by Federal Law, are to be applied in civil cases. Blackfeet Tribal Law and Order Code, Chap. 2, Sec. 2 (stating "[i]n all Civil cases . . ., the Court shall apply any Law of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the Tribe, not prohibited by such Federal law"). Because Glacier Electric is a non-Indian and the Blackfeet Tribal Code specifically provides that the Blackfeet Tribal Court does not have jurisdiction over non-Indians, the Tribal Court plainly lacks jurisdiction over the Lawsuit filed in Tribal Court. As a result, Plaintiffs respectfully submit that the Court's Order (Doc. 10) was predicated on an error of law.

II. Legal Precedent Cited In The Order Should Not Apply To This Case.

The Order cites *Grand Canyon Skywalk Development v. Sa Nyu Wa, Inc.*, 715 F.3d 1196 (9th Cir. 2013) for the proposition that Glacier Electric's actions constitute an intrusion on the Blackfeet Tribe's right to exclude, irrespective of whether the land on which Glacier Electric conducts its business is Indian or non-Indian land. (Doc. 10, p. 9). In *Grand Canyon*, the Court found that the tribe's inherent authority over tribal land provided for regulatory authority over a non-Indian who developed and managed a tourist attraction located on remote tribal

land uniquely situated near the Grand Canyon. Here, Glacier Electric's conduct at issue in the Lawsuit did not occur on tribal land and, therefore, the tribe's inherent authority over tribal land does not provide for regulatory authority over Glacier Electric. Accordingly, Plaintiffs respectfully submit that *Grand Canyon* does not apply in this case.

In *Grand Canyon*, Grand Canyon Skywalk Development ("GCSD"), a Nevada corporation, entered into a revenue-sharing contract with Sa Nyu Wa ("SNW"), a tribally chartered corporation of the Hualapai Tribe, to establish a glass bridge overlooking the Grand Canyon on remote tribal land. *Id.* at 1198-99. When a dispute arose over the contract, GCSD sued SNW in Hualapai Tribal Court to compel arbitration. *Id.* at 1199. While arbitration proceeded, the Hualapai Tribal Counsel exercised its right of eminent domain and condemned GCSD's intangible property rights in the contract. *Id.* GCSD responded by filing suit against SNW in the United States District Court for the District of Arizona seeking declaratory judgment that the Hualapai Tribe lacked the authority to condemn its intangible property rights. *Id.* The district court denied the temporary restraining order to enjoin SNW based on the principle of comity and required GCSD to exhaust all tribal court remedies before proceeding in federal court. *Id.* GCSD appealed the district court's decision and the Ninth Circuit affirmed. *Id.*

The Ninth Circuit concluded that the tribal court did not plainly lack jurisdiction because the tribe's inherent authority over tribal land provided for regulatory authority over non-Indians on that land. *Id.* at 1204. The premise of the Ninth Circuit's finding was the fact that the conduct at issue in the lawsuit occurred solely on tribal land. *Id.* The Ninth Circuit noted that GCSD agreed to develop and manage a tourist attraction located on tribal land in exchange for a fee and that it was the impressive beauty of the tribal land that was the valuable centerpiece of the controversy. *Id.* The Ninth Circuit found that the contract in the case interfered with the Hualapai's ability to exclude GCSD from the reservation. *Id.* The Ninth Circuit also determined that GCSD should have reasonably anticipated being subjected to the Tribe's jurisdiction because the parties' agreement contained a provision that specified that GCSD would act in compliance with Hualapai Nation laws. *Id.* at 1206.

Unlike *Grand Canyon*, the conduct at issue in the Lawsuit filed in Tribal Court did not occur on tribal land. As alleged in Plaintiffs' Complaint, Glacier Electric's rights-of-way through the Blackfeet Indian Reservation are the equivalent of non-Indian fee land. *Big Horn County Electric Cooperative, Inc. v. Adams*, 219 F.3d 944, 950 (9th Cir. 2000); *see also* Doc. 1, pp. 13-14, ¶ 38. The Tribal Court, therefore, does not have adjudicative jurisdiction over this matter based on Glacier Electric's rights-of-way, which constitute the equivalent of non-

Indian fee land. Defendants did not dispute this allegation and, by filing a Motion to Dismiss, accepted this allegation as true. Also, unlike *Grand Canyon*, Glacier Electric's rights-of-way do not interfere with the Tribe's ability to exclude Glacier Electric from the reservation. Further, unlike *Grand Canyon*, Glacier Electric did not reasonably anticipate being subjected to the Tribe's jurisdiction because its service agreements do not address compliance with Blackfeet laws. Because *Grand Canyon* is distinguishable from this case, Defendants' Motion to Dismiss should have been denied.

III. The *Montana* Exceptions Are Not Satisfied.

Although Plaintiffs maintain that it is not necessary to consider the *Montana* exceptions in light of the provisions in the Blackfeet Tribal Code limiting Tribal Court jurisdiction to American Indians, Plaintiffs submit that application of the *Montana* exceptions was an error of law in two respects. First, the Order states that the first *Montana* exception is satisfied because "Glacier Electric has entered into a consensual relationship with Blackfeet tribal members" (Doc. 10, p. 10). Plaintiffs assert that Defendants' Lawsuit did not arise out of any consensual commercial contacts between Defendants and Glacier Electric. (Doc. 6, pp. 26-28).

The consensual relationship exception does not apply unless the cause of action actually arises from the relationship invoked for jurisdictional purposes;

otherwise the relationship has no bearing on the case or the jurisdiction of the court. *See e.g., Strate v. A-1 Contractors*, 520 U.S. 438, 457-58 (1997). Random agreements which do not affect the outcome of the case should be ignored. *Id.*

“The mere fact that a nonmember has some consensual commercial contacts with a tribe does not mean that the tribe has jurisdiction over all suits involving that nonmember, or even over all such suits that arise within the reservation; the suit must also arise out of those consensual contacts.” *Philip Morris USA, Inc. v. King Mt. Tobacco Co.*, 569 F.3d 932, 941 (9th Cir. 2009). In other words, “[a] nonmember’s consensual relationship in one area does not trigger tribal civil authority in another – it is not in for a penny, in for a Pound.” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001). While Defendants claim that Glacier Electric has entered into contracts with tribal members to provide electricity to them (Doc. 1-2, p. 5, ¶ 20), none of these alleged agreements are at issue in the Lawsuit filed in the Tribal Court. Rather, the Tribal Court Lawsuit centers on Glacier Electric’s Bylaws and the alleged actions of Glacier Electric’s directors – both of which are unrelated to the actual provision of service to the Defendants. *See* Doc. 1-2.

Tribal jurisdiction is cabined by geography: The jurisdiction of tribal courts does not extend beyond tribal boundaries. *Atkinson Trading Co.*, 532 U.S. at 658 n. 12; *see also Phillip Morris*, 569 F.3d at 938. Defendants’ Tribal Court Lawsuit

seeks to regulate Glacier Electric property located outside of the exterior boundaries of the Blackfeet Reservation. *See* Doc. 1-2. For example, Defendants' Tribal Court Complaint seeks court regulation of: (1) all pre-pay meters; (2) sale of Glacier Electric property located outside the exterior boundaries of the Blackfeet Reservation; (3) deposits for electricity by customers located outside the exterior boundary of the Reservation; and (4) use of Glacier Electric money. *See id.* The focus of Defendants' Tribal Court Complaint is to regulate Glacier Electric beyond the reservation boundaries, which is beyond tribal jurisdiction. *See id.* The fact that Glacier Electric may provide electricity to some individuals residing on the reservation does not alter the geographic scope of Defendants' claims. *See Phillip Morris*, 569 F.3d at 943. Because Defendants seek to regulate Glacier Electric's conduct occurring on property located outside the exterior boundaries of the reservation, there is no colorable claim for tribal jurisdiction. *See id.*

Second, the Order states that the second *Montana* exception is satisfied because “[t]he Cooperative Member’s allegation that Glacier Electric conducts winter shut-offs undoubtedly has a direct effect on the health or welfare of the Blackfeet Tribe.” (Doc. 10, p. 11). This conclusion exceeds the scope of the second *Montana* exception. “Read in isolation, the *Montana* rule’s second exception can be misperceived.” *Strate*, 520 U.S. at 459. “Key to its proper application, however, is the Court’s preface: ‘Indian tribes retain their inherent

power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self-government or to control internal relations.” *Id.*

The generalized threat that turning electricity off poses for any society is not what the second *Montana* exception is intended to capture. *See Phillip Morris*, 569 F.3d at 943.

Federal or state control over this case would not harm the Tribe's ability to govern its own members or reduce the Tribe's control over internal relations. Defendants are not claiming injuries arising from the Tribe's inability to govern its own members or control internal relations. As a result, the second *Montana* exception is not met. Thus, Plaintiffs respectfully submit that the Tribal Court plainly lacks jurisdiction over this matter.

IV. The Standard of Review Applicable to Defendants' Motion to Dismiss.

Defendants did not set forth the standard of review governing their Motion to Dismiss. *See* Doc. 3; *see also* Doc. 6. The Court found that Defendants' Motion to Dismiss was made pursuant to Fed. R. Civ. P. 12(b)(1). (Doc. 10, p. 1). A claim can be challenged under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction both facially and factually. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

In a facial challenge, the defendant asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction. *Id.* The court will construe the complaint liberally, accept all uncontroverted, well-pleaded factual allegations as true, and view all reasonable inferences in plaintiff's favor. *See Courthouse News Service v. Planet*, 750 F.3d 776, 780 (9th Cir. 2014).

In contrast, in a factual challenge, the defendant objects to the factual merits of the asserted federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In such a challenge, the pleading itself may have adequately alleged the presence of federal subject matter jurisdiction, but the actual facts and allegations before the court may belie that averment, confirming that federal jurisdiction is absent and, thus, compelling the case's dismissal. *Id.* In examining factual challenges, the court will not presume that the plaintiff's factual allegations are true, and will not accept conclusory allegations as true but may instead weigh the evidence before it and find the facts, so long as this fact-finding does not involve the merits of the dispute. *White*, 227 F.3d at 1242; *see also Young v. U.S.*, 769 F.3d 1047, 1052 (9th Cir. 2014). In doing so, the court enjoys broad discretion and may receive and consider extrinsic evidence. *Kingman Reef Atoll Investments, LLC v. U.S.*, 541 F.3d 1189, 1195 (9th Cir. 2008).

In considering a motion to dismiss under Rule 12(b)(1), Fed. R. Civ. P., it is necessary to identify and properly apply either of these standards. *See Lambright*

v. Ryan, 698 F.3d 808, 817 (9th Cir. 2012) (stating that a court errs when it fails to apply the correct legal standard); *Towery v. Ryan*, 673 F.3d 933, 940 (9th Cir. 2012) (stating that a court errs when its fails to identify and apply the correct legal rule to the relief requested); *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (finding that the district court erred because it failed to apply the correct legal standard). Here, Defendants did not indicate whether they were asserting a facial challenge or a factual challenge. *See* Doc. 3. However, under either standard, Defendants were not entitled to the relief they requested.

Defendants cannot satisfy the facial standard. Although the Order states that the “Cooperative Members” who are the plaintiffs in the underlying Blackfeet Tribal Court suit “are members and qualified voters of Glacier Electric Cooperative, Inc.” (Doc. 10, p. 3), Plaintiffs’ Complaint alleges that “[a]t the time the Tribal Court Plaintiffs filed the Lawsuit, eleven of the Tribal Court Plaintiffs were not members of Glacier Electric.” (Doc. 1, p. 6, ¶ 17). In their Brief in Opposition to Defendants’ Motion to Dismiss, Plaintiffs restated that “eleven of the Defendants are not even members of GEC.” (Doc. 6, p. 28). Defendants did not substantively address this allegation. *See* Doc. 9, p. 5.

Further, the Order states “[w]hether the land underlying the dispute is Indian or non-Indian remains unclear from the record at this point.” (Doc. 10, p. 9). However, Plaintiffs’ Complaint avers that “Glacier Electric’s rights-of-way

through the Blackfeet Indian Reservation are the equivalent of non-Indian fee land” and that “[t]he Tribal Court does not have adjudicative jurisdiction over this matter based on Glacier Electric’s rights-of-way, which constitute the equivalent of non-Indian fee land.” (Doc. 1, pp. 13-14, ¶ 38). Plaintiffs’ Complaint, on its face, establishes that Glacier Electric’s rights-of-way are treated as non-Indian fee land. Defendants, therefore, did not apply the facial challenge standard in their Motion to Dismiss.

The Defendants also did not discuss the factual challenge standard and, as a result, the Order does not indicate the evidence considered under such a challenge or the weight accorded to such evidence. *See* Doc. 3; Doc. 10. For example, whether all of the tribal court plaintiffs are members of Glacier Electric is a contested matter. *See* Doc. 1, p. 6, ¶ 17; Doc. 1-2, p. 3, ¶ 5. While the Court found that all of the tribal court plaintiffs – the Defendants in this case – are members of Glacier Electric, the Order does not indicate the evidence underlying this conclusion. *See* Doc. 10, p. 3. Similarly, although the Order states that “the record indicates relevant conduct may have taken place on both Indian and non-Indian lands” (Doc. 10, p. 9), Defendants did not submit evidence related to this conclusion or submit evidence disputing that Glacier Electric’s rights-of-way through the Blackfeet Indian Reservation are the equivalent of non-Indian fee land. *See generally* Doc. 3; *see also* Doc. 1, pp. 13-14, ¶ 38. Because Defendants failed

to identify and properly apply the standard of review applicable to their Motion to Dismiss, Plaintiffs' Rule 60(b) Motion should be granted.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their Rule 60(b) Motion.

Dated this 30th day of July, 2015.

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/s/ Kelsey Bunkers

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(d)(2) of the United States Local Rules, I certify that this Brief is limited to 3,322 words, excluding caption and certificates of service and compliance, printed in at least 14 points and is double spaced, except for footnotes and indented quotations.

DATED this 30th day of July, 2015.

/s/ Kelsey Bunkers

IN THE BLACKFEET TRIBAL COURT, IN AND FOR THE BLACKFEET INDIAN RESERVATION

Floyd "Bob" Gervias, James Kittson,)
Scott Smith, Emerald "Beep" Grant,)
Suzie Murray, Tashina McNabb,)
William Guardipee, Fred Guardipee,)
Heather Juneau, Joseph Arrowtop,)
William Wetzel, Troy Wilson,)
Melissa Gervais, Wilfred DeRoche,)
Georgia Matt, Rodney "Minnow" Gervias,)
Ralph Johnson, Mike Kittson, Kathy Broere,)
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Rodney Gervais, Duane Ladd, Marcella)
Birdrattler, Tom Gervais, Jim Gervais,)
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Titus Upham, John DeRoche, Carl Evans,)
Jeri J. Elliott, Dennis Juneau,)
Teri Ann DeRoche, Paul McEvers,)
Patricia Calflooking, Tony Carlson,)
Sarah Calf Boss Ribs, Kathy Gervais,)
Marcella Green, Ellen Burdeau,)
Randy Augare, Robert Wagner,)
Kenny Walter, Honey Davis, Anna Horn,)
Cherlyl Gervais, Anita Potts,)
Therese Salois, Faith Gervais,)

Plaintiffs,)

v.)

Glacier Electric Cooperative, Inc.,)
Brian Elliott, Willard Hjartarson,)
Jim Newman, Darrol Berkram,)
Zita Bremner, Miles Lewis,)
Dave Losing, and James Taylor,)
in their official capacities)
as directors of Glacier Electric)
Cooperative, Inc., and Dan Brewer,)
in his official capacity as Interim)
General Manager of Glacier Electric)
Cooperative, Inc.,)

Cause No. 2014CA107

ORDER

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Burk, Lee & Bieler, PLLC

Defendants.)
)
)

Defendants Glacier Electric Cooperative “GEC” have a filed a motion to dismiss with this court arguing that this court does not have subject matter and personal jurisdiction over them as they are non-Indians. (Defendant’s Motion to Dismiss). Plaintiffs, Gervais et. al, (Hereinafter “Gervais”) filed a response brief. The motion to dismiss is fully briefed. The court heard oral arguments from both parties on May 5th 2015. For reasons that follow the Court denies the Defendant’s motion to dismiss.

I. BACKGROUND

The Verified Complaint filed by the Plaintiffs alleges that almost all the Plaintiffs are enrolled members of the Blackfeet Tribe, and all reside on the Blackfeet Reservation. (Verified Complaint p.3) All the Plaintiffs receive their electrical power from the Defendant, Glacier Electric Cooperative. (Id.)

GEC is an electrical cooperative that is incorporated in the State of Montana. GEC provides electrical service to the Plaintiffs. (Id.) GEC has entered into contracts with each of the Plaintiffs to provide electrical. (Verified Complaint p. 5) All of the Plaintiffs reside on the Blackfeet Indian Reservation and most of the them reside on trust land. (Id.)

II. DISCUSSION

GEC asks this court to dismiss the complaint for several reasons. First, that the Tribal court lacks jurisdiction to decide this case and cites to the Blackfeet Law and Order Code. Second, under Federal law the tribal court lacks subject matter and personal jurisdiction over the Plaintiff’s cause of action. The Plaintiffs argue this Court has jurisdiction based on the fact the GEC is an Indian owned entity and that the tribal court has inherent jurisdiction based on its power to exclude. Finally, the Plaintiffs argue if this court does not have inherent authority then, this Court has jurisdiction based on the

Montana exceptions

A. The Blackfeet Tribe's inherent authority to exclude GEC includes the lesser authority of regulatory and adjudicatory jurisdiction over GEC independent of Montana.

The power to exclude is the power to regulate. *Grand Canyon Skywalk LLC v. 'SA' NYU WA Inc*, 715 F.3d 1196,1204 (2013); *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802, 805 (9th Cir. 2011); *South Dakota v. Bourland*, 508 U.S. 679, 688-89 (1993). The Ninth Circuit, in its latest opinion, has determined that a tribe's inherent authority over tribal land may provide for regulatory authority over non-Indians on tribal land based on the inherent right to exclude. *Grand Canyon Skywalk*, 715 F.3d at 1204.

In *Grand Canyon Skywalk*, a non-Indian corporation incorporated in the State of Nevada and a non-Indian agent sued an Indian corporation in Federal Court asking for declaratory and injunctive relief. The underlying issue was the enforcement of a management agreement. *Id.* In *Skywalk* the tribe's land location was the center of the controversy. *Id.* Thus, the court concluded that although the case involved an intangible property right the case interfered with the Tribe's ability to exclude the Non-Indian corporation from the reservation. *Id.*

In *Grand Canyon Skywalk* the Court held the "Strate exception does not apply here" to deny the tribal court of its initial jurisdiction. The tribal court does not plainly lack jurisdiction because Montana's main rule is unlikely to apply to the facts of this case. Furthermore, the district court correctly relied upon *Water Wheel*, which provides for tribal jurisdiction without even reaching the application of Montana" *Grand Canyon Skywalk*, 715 F.3d at 1203.

This case is quite similar to *Grand Canyon Skywalk*. The Plaintiffs have alleged that most of the electrical service is provided to the cooperative members on tribal land. The Tribe has in the past regulated GEC through tribal law. (See Blackfeet

Tribal Council Resolution 95-88). Tribal authority over the activities of non-Indians on tribal land is an important part of sovereignty. Thus, where a tribe has regulatory jurisdiction and interests, this Court finds that it has adjudicatory jurisdiction. The principle that a Tribe's inherent sovereign power to exclude includes the power to regulate and adjudicate applies to this case as an independent source of regulatory authority and jurisdiction over GEC. When GEC does business on the Reservation with tribal members on tribal land, the inherent power described in *Grand Canyon Skywalk* applies.

B. The Blackfeet Tribal Court has Personal and Subject Matter jurisdiction over the Glacier Electric Cooperative under *Montana v. United States*, 450 U.S. 544 (1981).

1. The Blackfeet Tribe has regulatory and adjudicatory jurisdiction over GEC under the first *Montana* exception because the parties entered into a consensual and contractual relationship.

In 1981 the United States Supreme Court decided *Montana v. United States*, 450 U.S. 544 (1981), which provides the frame of reference on whether a tribal court has jurisdiction over non-members. As applied to the first *Montana* exception, tribes may have jurisdiction over non-members who have consensual dealings with "tribes or its members." *Montana*, 450 U.S. at 565. *Montana*, as it applies to this case, is set forth in *Big Horn County Electric Cooperative, Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000). "...*Montana* limits tribal jurisdiction under the first exception to the activities of nonmembers who enter [into] consensual relationships." *Adams*, 219 F.3d at 951. Applying this standard to the activities of an electrical company doing business on the Crow Reservation, the Ninth Circuit ruled, "The district court correctly concluded that *Big Horn* formed a consensual relationship with the Tribe because Big Horn entered into contracts with tribal members for the provision of electrical services....Big Horn's voluntary provision of electrical services on the Reservation did create a consensual relationship." *Id. It is clear* , the Ninth Circuit Court of Appeals has decided Tribal

Courts have jurisdiction over disputes arising between a utility company providing utility services on an Indian Reservation and its customers residing on the Indian reservation under the first *Montana* exception.

2. The Blackfeet Tribe Court has jurisdiction over GEC under the second Montana exception.

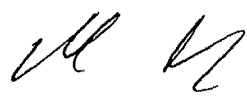
The second exception exists where the conduct of a non-Indian threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Id.* at 566. This language authorized tribal jurisdiction of conduct which affects either the political integrity or economic security or the health or welfare of the tribe.

U.T. In this case, the Blackfeet Tribal Court is aware the Plaintiffs need their electricity as without electricity these Plaintiffs are without heat and water and during the winter months a home without electricity is not habitable. The Blackfeet Tribe's interest in providing tribal members residing on Reservation with protections for their utility services, particularly for its most vulnerable residents, affects the health and safety of tribal members. Conduct which threatens to freeze people out of their homes threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe. Thus, this tribal court has jurisdiction over disputes arising between a utility company providing utility services on an Indian Reservation and its customers residing on the Indian reservation under the second *Montana* exception.

IT IS ORDERED:

The Defendant's motion to dismiss is denied.

Dated this 26th day of May, 2015.



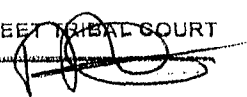
David Gordon, Chief Judge

FILED

MAY 28 2015

BLACKFEET TRIBAL COURT

By _____



CERTIFICATE OF SERVICE

I, the undersigned Clerk of the Blackfeet Tribal Court, hereby certify that on this 26th day of May, 2015, I mailed a true and conformed copy of the foregoing: **ORDER** by depositing same with the U.S. Postal Service at Browning, Montana postage, addressed to the following:

JUSTIN LEE
BURK, LEE & BIELER
216 MAIN AVENUE NORTH
P.O. BOX 1350
CHOTEAU, MT. 59422

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By: _____


CLERK