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Attorneys for Shoshone Business Council Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

Northern Arapaho Tribe, for itself and as *parens patriae* Plaintiff, v. Darryl LaCounte, Louis Reyes, Norma Gourneau, Ray Nation, Michael Black and other unknown individuals, in their individual and official capacities, and Darwin St. Clair and Clint Wagon, Chairman and Co-Chairman of the Shoshone Business Council, in their	Civil Action No. CV-16-00011-BMM **SHOSHONE BUSINESS COUNCIL DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS**

individual and official capacities,

Defendants.

INTRODUCTION

Defendants' Darwin St. Clair, Jr., and Clinton D. Wagon ("Shoshone Business Council Defendants") Motion to Dismiss should be granted under Federal Rules of Civil Procedure Rules (1), (2), (3), (6), and/or (7).

ARGUMENT

I. Plaintiff has not Proven that this Court has Subject Matter Jurisdiction.

A. Tribal Sovereign Immunity Bars Prosecution of this Action.

Plaintiff tries to sneak past tribal sovereign immunity by arguing that the Shoshone Business Council Defendants are susceptible to being named defendants in this action due to the 638 contracts at issue. This position is incorrect. 25 U.S.C. § 450n is clear that nothing in the ISDEAA is to be construed as "(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe."

Plaintiff mistakenly cites to Department of the Interior Related Agencies Appropriations Act, 1991, Pub. L. No. 101-512, Title III, § 314, 104 Stat. 1915 (1990) (codified at 25 U.S.C. § 450f note) ("Appropriations Act") for a gross misapplication of the law. The scope of § 314 of the Appropriations Act is very

limited in nature and purpose. Amendments to the ISDEAA, contained in the Appropriations Act, provide for the United States to assume tort liability for the negligent acts of ISDEAA contracting employees by allowing the United States to be sued under the Federal Tort Claims Act ("FTCA"). *Snyder v. Navajo Nation*, 371 F.3d 658, 662 (9th Cir. 2004).

When President Bush signed the Appropriations Act, he stated, "The [Appropriations Act] includes permanent substantive legislation with respect to the Federal Tort Claims Act . . . The effect of this provision would be to make the United States permanently liable for the torts of Indian Tribes, tribal organizations, and contractors." 1900 U.S.C.C.A.N. 3283-4, 1990 WL 300962. President Bush stated that he saw this provision as fundamentally flawed, "because the United States does not control and supervise the day-to-day operations of the tribes, tribal organizations, and contractors." *Id* at 5.

This is not an FTCA case and the Shoshone Business Council Defendants are not United States officers. "Tribal immunity extends to individual tribal officials acting in their representative capacity and within the scope of their authority." *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479-80 (9th Cir. 1985). Plaintiff appears to agree that the Shoshone Business Council defendants acted within the scope of their authority (Doc. 51, pg. 27). Plaintiff failed to make specific allegations about what ultra vires acts the two individual Shoshone

Business Council members committed. The wrongs complained of by Plaintiff are not that the Shoshone Business Council Defendants acted wrongly on their own, rather it is that the Eastern Shoshone Tribe has engaged in unlawful activity (Doc. 51, pg. 27-28). Plaintiff's attempt to sue the Shoshone Business Council Defendants should be seen for what it truly is, an attempt to circumvent the Eastern Shoshone Tribe's sovereign immunity.

Plaintiff cites to *Ex parte Young*, but the fiction of *Ex parte Young,* 28 S. Ct. 441, (1908) was replaced by §702 of the Administrative Procedure Act ("APA"). *E.E.O.C. v. Peabody Western Coal Co*., 610 F.3d 1070, 1085-86 (9th Cir. 2010). Plaintiff's lawsuit is not brought under the APA; and, even if it did, nothing in the APA waives tribal immunity. Moreover, Plaintiff's requested relief exceeds that provided for in 5 U.S.C. § 706. *See also Quern v. Jordan*, 440 U.S. 332, (1979) ("[A] federal court's remedial power . . . is necessarily limited to prospective injunctive relief, *Ex parte Young, supra*, and may not include a retroactive award.")

Plaintiff's tenuous claim that the Shoshone Business Council Defendants do not have the protection of sovereign immunity is unfounded. Plaintiff has not met its burden in proving that an exception exists, which would grant subject matter jurisdiction, to the otherwise available tribal immunity bar on prosecuting this action.

In addition, this Court should carefully consider the poor policy the Plaintiff is urging the Court to adopt. The view Plaintiff is trying to foist upon the Court will subject individual Tribal Council members across the nation to suit by any person interested in a 638 contract.

B. There is No Federal Law Question.

This case does not pose any federal law treaty questions between the Shoshone Business Council Defendants and Plaintiff. Although Plaintiff made noise about 'underlying treaties' (Doc. 51, p. 19), it failed to cite any treaty provision related to its claims. The fact Plaintiff cannot escape is that it does not have a treaty pertaining to the Wind River Reservation. Plaintiff's vague references to 'underlying treaties' does not confer federal question jurisdiction.

Plaintiff also tries to use the ISDEEA as a federal law basis for jurisdiction. Plaintiff says that the Shoshone Business Council Defendants cannot manage or operate federal ISDEAA contracts through the JBC without Plaintiff.[1] Plaintiff says time and again that it did not approve this ISDEAA contract in particular, but fails to contest the fact that it had previously approved the ISDEAA Tribal Cout contract through the JBC, and that this contract renewed previous services. Although Plaintiff makes trumped-up allegations of denial of equal protection and diminishment of privileges and immunities, the real issue in this case stems from a

[1] It should be noted, however, that Plaintiff does not maintain that Defendants deny Plaintiff the ability to participate in JBC.

disagreement between the two tribes on the joint management structure for Pub L. 638 contracts.

This is exactly the type of intertribal oversight activity that the District Court rejected in *Eastern Shoshone Tribe v. Northern Arapaho Tribe,* 926 F. Supp. 1024 (1996). In that case, the District Court rejected the idea that it had oversight of Tribal activity as a matter of federal law, where the two tribes choose to act together but later were unable to agree. The Court opined, "Such oversight is not justified or provided for by existing federal law." Despite that clear declaration about the absence of federal law justifying this Court's assertion of jurisdiction, the Plaintiff is trying to draw this Court into the same fight in which the federal Court in *Eastern Shoshone v. Northern Arapaho Tribe* refused to engage.

C. IBIA Appeal Precludes Jurisdiction.

The legal doctrine of the "first-filed rule" precludes jurisdiction. This legal principal of law was first announced in *Smith v. McIver*, 22 U.S. 532 (1824), where the Supreme Court explained that in all cases where alternate forums could exercise jurisdiction over an action, the tribunal which first has possession of the subject must decide it. *See also* R*iggs v. Johnson County*, 73 U.S. 166, 177-78 (1867); *In re Lasserot*, 240 F. 325 (9th Cir. 1917) (quoting *Taylor v. Taintor*, 83 U.S. 366, 370 (1872); *Pacesetter Systems, Inc. v. Medtronic, Inc*. (Affirming

District Court's decision denying jurisdiction where court was the second-filed forum.)

In 25 U.S.C. §450f(b), the ISDEA gives a choice to parties aggrieved by agency action: it may seek an administrative hearing on the record "under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court. . . ." 25 U.S.C. § 450f(b)(3) (emphasis added). It is well-established that the phrase "in lieu of" means "instead of," "in place of," or "in substitution of." *Blinzinger v. Lyng*, 834 F.2d 618, 622 (7th Cir. 1987); *Fed. Group, Inc. v. United States*, 67 Fed. Cl. 87, 106 (2005); Black's Law Dictionary (8th ed. 2004). It does not mean "in addition to." *Fed. Group* at 106. Although Plaintiff suggests such, *Shoshone-Bannock Tribes of the Fort Hall Reservation v. Shalala*, 988 F.Supp. 1306, 1316 (1997) does not address this issue.

Plaintiff had a clear choice, it could either "proceed directly to" federal district court or it could file an administrative appeal. What it could not do is file an administrative appeal and in addition file this case in federal district court. Plaintiff filed first with the IBIA, and therefore the IBIA appeal process was the required forum for adjudicating the merits of the case. Plaintiff's dismissal of the IBIA appeal in an attempt to unhitch fatal baggage does not alter that reality.

Plaintiff attempts to differentiate the contracts and issues in its IBIA Appeal and with those raised in this case. However, a quick review of the documents filed in both cases helps the Court discern otherwise. Plaintiff's IBIA Notice of Appeal[2] (Exhibit A) addresses the issue of whether the BIA can contract with the JBC:

> 6. Instead of approving any of the above-described proposals, the BIA awarded a judicial services contract to the SBC purporting to act on behalf of both the Eastern Shoshone Tribe and the Northern Arapaho Tribe through a former joint powers board known as the joint business council ("JBC"). The JBC has been dissolved since September of 2014. See 6 N.A.C. 103 et seq. (Northern Arapaho Code, Title 6, Section 103 et seq.), copy attached as Exhibit 3.

Compare this to the same content in the Complaint (Doc. 1):

> 48. Federal Defendants unlawfully condone, authorize or approve actions taken solely by the SBC as if it exercises the authority of both Tribes through the former joint powers organization, which no longer exists.
>
> …
>
> 52. Federal Defendants purport to enter into "638" contracts with the former JBC as a "tribal organization," even though (a) it lacks "the approval of each such Indian tribe" to be served with the contract, see 6 N.A.C. 103 et seq., attached as Exhibit 1. . .
>
> …
>
> 69. Federal Defendants denied proposals from NAT to continue to provide services cooperatively with both Tribes, on the grounds that the SBC had not consented (consent required by 25 U.S.C. §450b(1)).

While limitations on the length of this Reply brief will not allow a full comparison, the Court should also compare the Notice of Appeal, paragraph 11

[2] It is requested that the Court take Judicial Notice of IBIA cases 16-34 & 16-40. A Copy of the Northern Arapaho Tribe's Notice of Appeal, filed in those cases, is attached as Exhibit A for the Court's convenience.

regarding approval of a contract to JBC, to the Complaint paragraphs 67 and 70. The Court can also compare the Notice of Appeal, paragraph 9 regarding whether JBC is a 'tribal organization,' with Complaint paragraphs 52 and 53. In addition, compare paragraph 12-13, on infringement of sovereignty by dictating the form of government with the paragraphs 28, 44-51 in the Complaint (Doc. 1). Comparison of the Complaint with the Notice of Appeal reveals that both actions raise the same issues, including the tribal court application, and government authority over Plaintiff's members.

Additionally, the competing 638 contract applications were mutually exclusive. The decision to approve the JBC application necessarily resulted in the Plaintiff's application being denied. If not the very same, Plaintiff's IBIA case is certainly the other side of the same coin at hand in this case.

II. Personal Jurisdiction over the Two Tribal Council Individuals is Lacking.

Plaintiff has not met its burden in showing that this Court has personal jurisdiction over the Shoshone Business Council Defendants. Plaintiff's best fact regarding personal jurisdiction over the individuals, is that it believes the entire "[Shoshone Business Council] had traveled to Billings…" (Doc. 51, p. 28). Plaintiff's burden is to show facts relating to contacts by Councilman St. Clair and Councilman Wagon. Vague conjecture about actions of the entire Council are not sufficient to justify jurisdiction.

The only fact Plaintiff cited relating to an individual act was a counter signature by Councilman St. Clair (Doc. 51, p. 28). However, the assertion fails to mention anything about an activity in Montana.

Curiously, Plaintiff points to the activity of Shoshone Business Council member Ivan Posey, a non-party to this action, as suggesting that "SBC officials are active within [] Montana." This is further evidence of Plaintiff's attempts to blur the line between these named Shoshone Business Council Defendants and the entire Shoshone Business Council.

Montana does not have specific jurisdiction over the individual SBC Defendants. Plaintiff's reliance on *Spectrum Pool Products, Inc. v. MW Golden, Inc*., 968 P.2d 728 730-32 (Mont. 1998) is misplaced. In that case, the court determined that the party had "purposefully availed itself to conduct business" within Montana when the party provided repair services in Montana and payment of the contract was due in Montana. The Plaintiff has not asserted that these two individual Shoshone Business Council members engaged in commercial activity or performed business services in Montana.

The letters and phone calls back and forth between the BIA are a non-issue. "Even extensive interstate communications . . . do not give rise to jurisdiction where the contract is to be performed in another state." *Milkey Whey, Inc. v. Dairy Partners, LLC*, 378 Mont. 75, 83 (2015).

Even if there is administrative activity in Montana, the Court should take into account that the Shoshone-Business Council is required to interact with the Bureau of Indian Affairs, and did not decide to locate agency offices there. Such interaction cannot, therefore be seen as an attempt by these to individuals to avail themselves of Montana law.

III. Venue in Montana is Improper.

Under 1391(e)(1)(A) "residence" means the official residence, and not the personal residence of agency officers. *Lamont v. Haig*, 590 F.2d 1124, 1127-29 (D.C. Cir. 1978). The presence of a regional office within a judicial district does not make the agency or its officials a resident of the district for venue purposes. *Reuben H. Donnelley Corp. v. F.T.C.*, 580 F.2d 264 (7th Cir. 1978). Similarly, naming a subordinate who resides in a district does not render venue proper. *Williams v. U.S.*, 2001 WL 1352885, 1 (N.D. Cal. 2001) (Federal agency does not reside in district where branch office or subordinate officers are located, but resides only in Washington, D.C.).

This case is a challenge to actions taken by the Bureau of Indian Affairs on the Wind River Reservation. The proper venue for the Federal Defendants as officers of the BIA is Washington, DC. Venue is also proper in Wyoming.

IV. Plaintiff Fails to State a Claim.

As a preliminary matter, Plaintiff appears to agree that Declaratory Judgment and Injunctive Relief are not alone causes of action (Doc 51, pg. 22-23) ("NAT's purpose in presenting 'declaratory judgment' and 'permanent injunction' as its first and second claims for relief was to be clear that it seeks prospective relief for violations of federal law") (emphasis added). Plaintiff fails to state a claim on its other four legal theories as well.

A. Violation of Trust and Federally Protected Rights

Plaintiff argues that by entering into Self-Determination contracts the Shoshone Business Council Defendants are subject to the same liability as the United States. However, the ISDEAA does not give such duties to the two individual SBC Defendants as to the United States. Moreover, any duties that might be applied to them through the contract would have passed through to the contracting party—the JBC—and not the individual tribal officers.

B. Conversion

Plaintiff has not shown how the ISDEAA program funding relates to chattel property in order to overcome the general rule that money is not subject to conversion claims. *Ferguson v. Coronada Oil Co*., 884 P.2d 971, 975 (Wyo. 1994). Moreover, none of the elements necessary for a valid conversion claim is present regarding the personal property items (guns, ammunition, and equipment)

of the Shoshone and Arapaho Fish and Game Department. Plaintiff tries to claim that it was somehow damaged by the defendants' exercise of control over personal property items of the Game Department, yet asserts a contradictory principle in the Complaint: "18. In matters of common interest, the Tribes may, but are not required to, act cooperatively." (Doc 1., pg. 5).

Plaintiff's argues that "SBC commandeered ISDEAA program funding and equipment in which NAT held an interest" (Doc. 51, p. 34). However, Plaintiff does not have a property interest or entitlement to particular 638 contract funding. Plaintiff produced evidence that it was entitled to the 638 funding that was allegedly commandeered. Also, Plaintiff fails to acknowledge to the Court that is has exercised authority and control over joint funds and common equipment throughout the pendency of this proceeding as a signer on certain joint accounts.

C. Equal Protection

Without citing dispositive authority, Plaintiff suggests that the individual Shoshone Business Council Defendants are deemed employees of the federal government for all purposes, thereby subjecting them to the duties of the Fourteenth Amendment. Plaintiff has not brought forth any law to overcome the Supreme Court's rule in *Santa Clara Pueblo v. Martinez*, "As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as

unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority" 436 U.S. 49, 55 (1978).

D. Diminishment of Privileges and Immunities

Plaintiff has failed to cite authority supporting the proposition that these two individual Council defendants have all the same statutory and other legal obligations of the federal defendants for all causes of action. There is no private cause of action that one tribe has under the statutes cited by Plaintiff against another tribe's individual council members for diminishment of privileges and immunities.

Plaintiff argues that *Akiachak Native Community v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013) supports the idea that it states a diminishment of privileges and immunities claim against the individual SBC Defendants. However, that case involved a tribe suing the Secretary of Interior over a discriminatory regulation. It did not involve claims against another tribe's officers, and did not hold that tribal officers from one tribe can diminish privileges and immunities of another tribe through 638 contracting activities.

Plaintiff asks to conduct discovery 'to develop or refine any claims for relief' before dismissal (Doc. 51, p. 37), yet fails to cite a procedural Rule allowing the Court to keep claims around that should otherwise be dismissed.

V. Indispensable Party

Plaintiff's response on this issue again confirms that Plaintiff's efforts are to stop the actions of the entire Shoshone Business Council, acting on behalf of the Eastern Shoshone Tribe. (Doc. 51, pg. 27) ("one would expect that injunctive relief directed to Chairman St. Clair would serve to bar the entire SBC from future violations of federal law."). Where the real party in interest is the sovereign tribe, simply naming tribal officers in the complaint does not defeat tribal immunity. *Shermoen v. U.S.*, 982 F.2d 1312 (9th Cir. 1992).

The case of *Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990), which Plaintiff cites as authority, is distinguishable to the instant dispute. In *Makah Indian Tribe*, the Court dismissed two out of three causes of action because absent tribal parties' were necessary parties. *Id*. The only cause of action that did not require absent tribes' involvement was for specific violations of the procedural process the Secretary followed in promulgating certain regulations. *Id*. It was determined that the district court had the authority to grant relief on the procedural claim without the presence of the other tribes. *Id*. *Makah Indian Tribe* certainly does not stand for the position that the JBC, SBC, and/or EST are not necessary parties because of their status as federal employees, as suggested by Plaintiff.

CONCLUSION

The law and arguments raised in Plaintiff's response brief do not set forth sufficient grounds to deny the Shoshone Business Council Defendants' Motion to Dismiss. This Court should therefore grant the Motion to Dismiss.[3]

Dated this 18th day of April, 2016.

Respectfully submitted,

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[3] SBC Defendants' request to stay is moot and now withdrawn since NAT voluntarily dismissed the IBIA proceeding.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(B), the attached brief is proportionately spaced, has a typeface of 14 points and contains 3,243 words, excluding the caption and certificates of service and compliance.

ECHOH HAWK & OLSEN, PLLC

/s/ Mark Echo Hawk
Mark Echo Hawk

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing SHOSHONE BUSINESS COUNCIL DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS was electronically filed this 18th day of April, 2016. Notice of this filing will be sent by email to all parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

ECHOH HAWK & OLSEN, PLLC

/s/ Mark Echo Hawk
Mark Echo Hawk

EXHIBIT A

docketed

16-040

BEFORE THE
INTERIOR BOARD OF INDIAN APPEALS
ARLINGTON, VA 22203

Appeal of:

Northern Arapaho Tribe

Regarding Contract Proposal to Provide Judicial Services

IBIA No. _____

NOTICE OF APPEAL

1. The Northern Arapaho Tribe ("Tribe"), through its undersigned counsel, hereby files a notice of appeal of the Bureau of Indian Affairs ("BIA") Wind River Agency Superintendent's declination of proposals to contract for judicial services submitted pursuant to P.L. 93-638 (Indian Self Determination and Education Assistance Act or "ISDEAA"). The declination was received by the Tribe on December 23, 2015. *See* copy attached as Exhibit 1.

Overview

2. This appeal is a companion to IBIA Appeal No.___, in which the Chief Judge of the Shoshone and Arapaho Tribal Court appeals the BIA's denial of the very same contract proposal supported by the Tribe.

3. This also involves the BIA's denial of two additional proposals submitted by the Tribe as alternates, in the event the BIA denied the Chief Judge's proposal, including one to contract cooperatively with both the Northern Arapaho and the Eastern Shoshone Tribes. *See* Cover Letter of September 24, 2015, to BIA, copy attached as Exhibit 2.

4. All three proposals which are the subject of this appeal were declined: (1) the one submitted by the Tribal Court as a "tribal organization" under applicable regulations; (2) the one submitted to contract cooperatively with the Shoshone Tribe; and (3) the one submitted to contract with the Northern Arapaho Tribe to continue to provide services to both Tribes.

5. Two separate Tribes have an undivided interest in most of the trust lands on the Wind River Indian Reservation, Wyoming: the Northern Arapaho Tribe and the Eastern Shoshone Tribe. Each Tribe has separate treaties with the United States. Each Tribe is listed separately among the federally recognized tribes. *See* 25 C.F.R. 83.6 (b) (notice of list of federally recognized tribes). Each Tribe governs itself separately by vote of the tribal membership or by vote of its elected business council. The Shoshone Business Council ("SBC") is the primary governing body elected by members of the Eastern Shoshone Tribe, and the Northern Arapaho Business Council ("NABC") is the primary governing body elected by

members of the Northern Arapaho Tribe. In matters of common interest, the Tribes may act cooperatively.

6. Instead of approving any of the above-described proposals, the BIA awarded a judicial services contract to the SBC purporting to act on behalf of both the Eastern Shoshone Tribe and the Northern Arapaho Tribe through a former joint powers board known as the joint business council ("JBC"). The JBC has been dissolved since September of 2014. *See* 6 N.A.C. 103 *et seq.* (Northern Arapaho Code, Title 6, Section 103 *et seq.*), copy attached as Exhibit 3.

7. When the JBC still existed, it consisted of both Tribes' Business Councils meeting together and, when possible, acting together cooperatively. Affirmative votes from a majority of the members of *both* the SBC *and* the NABC were required for action to be taken. No single Tribe was ever authorized to act on behalf of the other without its consent.

Issues Presented

8. The BIA's decisions are arbitrary and capricious, without substantial justification, and contrary to law. The BIA fails to follow or apply applicable federal or tribal law.

Summary of Reasons

9. The BIA awarded the judicial services contract to a non-existent entity, the former joint powers board known as the JBC. The former JBC is no longer authorized by both Tribes to conduct any business whatsoever, let alone contract with the BIA for judicial services. As a non-entity, the JBC is not a "tribal organization" under applicable law.

10. The Tribal Court is a "tribal organization" under applicable law and eligible to contract for judicial services on behalf of both Tribes.

11. If services are to be provided to more than one Tribe under a 638 contract, the "approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant." 25 C.F.R. 900.6. In addition, "[i]f an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve." 25 C.F.R. 900.8(d)(1). The Northern Arapaho Tribe has not approved a contract award either to the defunct JBC or to the SBC.

12. The BIA ignores, misinterprets and misapplies tribal resolutions and law. For example, the BIA ignores the law of the Northern Arapaho Tribe dissolving the former JBC, *see* 3 N.A.C. (G)(ii) (Exhibit 3). It relies on Resolution Nos. 6076 and 6089, through which both Tribes created and authorized the Tribal Court, to deny an award to the Tribal Court and instead approve a contract to one Tribe (SBC) over the objection of the Northern Arapaho Tribe. In this way, the BIA attempts to dictate to the Tribe what form of government it develops and how it exercises its sovereign authority, in violation of applicable law.

13. The BIA also attempts to empower the SBC to govern on behalf of the Northern Arapaho Tribe without its consent, in violation of the sovereignty of the Tribe and applicable law.

14. The BIA failed to provide notices to the Tribe as required by law. These violations by the BIA interfered with and prevented the Tribe's efforts to negotiate a contract under the ISDEAA.

15. The BIA failed to offer or provide technical assistance to the Tribe as required by law. For example, the BIA failed to provide "any necessary requested technical assistance... in order to avoid declination of the proposal," as required by 25 C.F.R. 900.28. The BIA also failed to provide "additional technical assistance to overcome the stated objections" or additional "assistance to develop any modifications to overcome the Secretary's stated objections," as required by 25 C.F.R. 900.30. These violations by the BIA interfered with and prevented the Tribe's efforts to negotiate a contract under the ISDEAA.

16. The BIA failed to negotiate with the Tribe as required by law. These violations by the BIA interfered with and prevented the Tribe's efforts to negotiate a contract under the ISDEAA.

17. The BIA failed to inform the Tribe of "any missing items required by 900.8 and request that the items be submitted within 15 days of receipt of the notification" as required by 25 C.F.R. 900.15.

18. The BIA failed to identify any waivers of the regulations which might have been required to overcome its stated objections.

19. The BIA specified 25 C.F.R. 900.22 c) as the reason for its declination of the contract (proposed project cannot be properly completed or maintained). However, the BIA failed to specify any reason why the Tribal Court is not a "tribal organization" eligible to contract for judicial services or why either of the alternative proposals submitted by the Tribe were declined. The BIA does not explain why one Tribe (SBC) is capable of maintaining a judicial services contract but the Northern Arapaho Tribe is not. Nor does the BIA explain how one Tribe (SBC) may exercise judicial authority over another Tribe, or its members, without its consent. The BIA relies entirely on the fiction that the former JBC is still in existence and currently authorized by both Tribes to enter into the contract, knowing full well that it is not.

20. One or more of the proposals made or supported by the Tribe have been approved by operation of law. Specifically, on information and belief, the Tribal Court's proposal was submitted to the BIA on September 24, 2015. The notice of declination from the BIA is dated December 29, 2015, at least 96 days after its submission.

21. One or more of the waivers requested by the Tribe have been approved by operation of law, specifically, those requests for waivers of any part of the regulations which the

BIA might decide were applicable and could serve as grounds for declination.

Certification

22. The undersigned certifies that a copy of this Notice of Appeal has been sent to Superintendent Gourneau and Stella Corbin, the Contracting Officer at the addresses listed below, and to the Secretary of the Department of the Interior pursuant to 25 C.F.R. 900.152.

23. Copies of all pleadings and correspondence in this matter should be sent to the undersigned at the address below.

Dated this 20th day of January, 2016.

Respectfully Submitted,
Northern Arapaho Tribe

By: Andrew W. Baldwin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF APPEAL was served upon the following by U.S. mail, postage prepaid, certified mail on the 20th day of January, 2016:

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