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

**EAGLE BEAR, INC. and WILLIAM)
BROOKE,**

Plaintiffs,

v.

Cause No. 4:21-cv-00088-BMM

**THE BLACKFEET INDIAN NATION))
and THE BLACKFEET TRIBAL)
COURT,**

Defendants.

**DEFENDANTS' MEMORNDUM
IN OPPOSITION TO THE
PLAINTIFFS' SECOND
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

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Canby, William, *American Indian Law in a Nutshell*, 6th Ed., pgs. 239-240 . . 14

DePietro, Andrew, “Poorest Counties In Every State 2021”; [forbes.com](https://www.forbes.com). 22

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Defendants’ Exhibit A, Plaintiffs’ Interrogatory Response No. 10.

Defendants’ Exhibit B, Letter from Blackfeet Tribal Business Council Chairman to Rocky Mountain Regional Director, dated May 11, 2022.

COMES NOW the Defendants Blackfeet Indian Nation and Blackfeet Tribal Court, by and through counsel, and hereby respectfully submit their Memorandum in Opposition to the Plaintiffs' Second Motion for Preliminary Injunction and Temporary Restraining Order, as follows:

INTRODUCTION

This is the second time the Plaintiffs have been before the Court on a Motion for Preliminary Injunction, and now a Temporary Restraining Order. This Court properly denied the Plaintiffs' first motion (which is now on appeal to the Ninth Circuit Court of Appeals). Doc. 27 Order on Preliminary Injunction. The Court is fully appraised of the factual background of this case which is a challenge to the jurisdiction of the Blackfeet Nation and the Blackfeet Nation Court and the jurisdictional law which the parties have previously set out. See Docs. 1, 4, 5, 14, 15, 22, 25 & 26.

The differences between the status of the case at the filing of the first Motion for Preliminary Injunction and this Court's ruling denying that motion and the current motion are as follows:

1. The IBIA vacated all proceedings before that entity and remanded the matter back to the Rocky Mountain Regional Office. There are no proceedings before the IBIA.

In its Motion for Remand, the Regional Director claimed that there documents filed by the parties in the Blackfeet Nation's Motion to Dismiss for Mootness before the IBIA that were not in the record before the BIA. That claim was false.

The IBIA granted the Rocky Mountain Regional Director's Motion for Remand on March 3, 2022. The BIA Rocky Mountain Regional Director has now had almost one year from when the Blackfeet Nation first asked that office on June 18, 2021, to either provide documentation that the 2008 lease cancellation was not final or join the Blackfeet Nation in pursuing dismissal of the IBIA matter. The BIA Regional Director has produced nothing and made no decision.

2. The BIA Rocky Mountain Region replied to Eagle Bear's FOIA request and produced over 1,000 documents. There was no document reversing, overturning, withdrawing or setting aside the June 10, 2008 lease cancellation decision. Nor were there any other documents relevant to 2008 lease cancellation.

3. Eagle Bear and William Brooke have now set forth their claim that Brooke was advised by a BIA Blackfeet Agency employee to withdraw the Eagle Bear appeal of the June 10, 2008 lease cancellation and his claim that he spoke with a Blackfeet Nation employee who supposedly told him that his lease was in good standing.

4. The Blackfeet Nation exercised its sovereign right to exclude Eagle Bear from Blackfeet Nation land which they have no legal right to occupy.

This case should be over. The Plaintiffs' Second Motion for Preliminary Injunction and Temporary Restraining Order should be denied. The Blackfeet Nation Defendants' Motion to Dismiss for lack of jurisdiction and failure to exhaust Blackfeet Nation Court remedies should be immediately granted. BIA's 2008 cancellation of the former lease long-since became a final agency action and the statute of limitations has run.

BACKGROUND

On April 19, 2022, after due notice to the Bureau of Indian Affairs Rocky Mountain Regional Office and the Blackfeet Agency Office, the Blackfeet Nation advised Eagle Bear, Inc. that the Blackfeet Nation was exercising its right to exclude Eagle Bear from Blackfeet Nation to which it had no legal right of access or use. Doc. 51-1, 51-2.

After waiting 10 months for the Bureau of Indian Affairs or the Plaintiffs to produce any document from an appropriate BIA official withdrawing, reversing, overruling, rescinding, amending or modifying the BIA Blackfeet Agency's 2008 cancellation of the former Eagle Bear, Inc., the Blackfeet Nation determined that there are no other documents and that the cancellation became final in 2009.

No action was taken by the Blackfeet Nation to stop the Plaintiffs from operating the Blackfeet Nation's campground during the 2021 season as the season was already in effect and the Blackfeet Nation was attempting to determine whether the BIA had any additional documents related to the 2008 lease cancellation. Having determined that there are no other BIA documents related to or addressing the 2008 lease cancellation, that the cancellation was final and that Eagle Bear, Inc. had no legal right to occupy Blackfeet Nation land, the Blackfeet Nation took action pursuant to its sovereign power to exclude Eagle Bear and recover possession of its land.

The Blackfeet Nation is not abandoning its action against the Plaintiffs in the Blackfeet Nation Court. Nor is the Blackfeet Nation engaged in pre-judgment attachment. The campground and all property thereon will be secured while the Blackfeet Nation Court litigation proceeds. However there is no legal basis to continue to wait for the Bureau of Indian Affairs Rocky Mountain Regional Director to make a decision or produce documents. There are no further documents to produce and there is no legal theory supporting the BIA Rocky Mountain Regional Director's assertion of the authority to review (and modify) the 2008 lease cancellation decision.

It is now clear from the administrative record and Eagle Bear and Brooke's assertions based on their interrogatory responses, that there is no written decision from the BIA withdrawing, reversing, overruling, overturning, setting aside or otherwise modifying the BIA Blackfeet Agency Superintendent's June 10, 2008 cancellation of the former Eagle Bear lease. Eagle Bear does not rely on or advance any further written administrative decision from the BIA. There is no legal authority to support Eagle Bear and Brooke's claim that the lease cancellation could essentially be reversed by the action of a BIA Agency employee's request that they withdraw the appeal of the lease cancellation. No further administrative review is necessary, required or allowed. See Doc. 22 & 26.

Eagle Bear, Inc. has no legal right to occupy Blackfeet Nation land. The former lease was cancelled in 2008 and that cancellation was never reversed, withdrawn, rescinded, set aside overturned or modified in any written decision by an appropriate BIA official. The former lease was cancelled again in 2017. In April of 2021 the lease expired. There is no lease.

As set forth herein, the Plaintiffs' Second Motion for Preliminary Injunction and Temporary Restraining Order must be denied.

LEGAL STANDARD

Plaintiffs seeking a preliminary injunction must meet four (4) elements: 1) that they will likely succeed on the merits; 2) that they will suffer irreparable harm if a preliminary injunction is not granted; 3) that the balance of the equities tips in their favor; and, 4) that an a preliminary injunction will serve the public interests. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 22 (2008). A preliminary injunction is an extraordinary remedy that should not be awarded as a matter of right, "but only upon a clear showing that the plaintiff is entitled to such relief". *Id.*

The Ninth Circuit has determined that the "serious questions" version of the sliding scale test for preliminary injunctions remains viable after the Supreme Court's decision in *Winter*. However the "serious questions" sliding-scale approach survives *Winter* only when applied as part of the four-

element *Winter* test. “That is, “serious questions going to the merits” and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.”

Alliance for the Wild Rockies v. Cottrell, 632 F.3 1127, 1136 (9th Cir. 2011).

ARGUMENT

A. Because the Plaintiffs Cannot Meet the Requirements of Preliminary Injunction, their Second Motion for Preliminary Injunction and Temporary Restraining Order Must be Denied.

Just as it did in the Plaintiffs’ first Motion for Preliminary Injunction, the Court should deny the Plaintiffs’ Second Motion for Preliminary Injunction and Temporary Restraining Order. There are no serious questions going to the merits of the question of the Blackfeet Nation’s jurisdiction over the Plaintiffs or the Plaintiffs’ duty to exhaust their Blackfeet Nation Court remedies prior to bringing a jurisdictional challenge in this court.

Because the record is now clear that the BIA Blackfeet Agency’s June 10, 2008 cancellation of the former lease was never reversed, set aside, withdrawn, rescinded or modified in any manner and that Eagle Bear’s claims regarding the withdrawal of their appeal are not supported by any recognized legal theory, the Blackfeet Nation Defendants agree that the subject the Plaintiffs’ Second Motion for Preliminary Injunction is narrower and clearer than in their first Motion. The

Plaintiffs' Second Motion for Preliminary Injunction and Temporary Restraining Order should be promptly denied. The Blackfeet Nation Defendants' Motion to Dismiss should be immediately granted.

1. The Plaintiffs' Are Less Likely to Succeed on the Merits of Their Second Challenge to the Jurisdiction of the Blackfeet Nation or their Duty to Exhaust Blackfeet Nation Court Remedies Than They Were on the First Challenge.

Once again the Plaintiffs seek a preliminary injunction in this matter preventing the Blackfeet Nation and the Blackfeet Nation Court from asserting jurisdiction over them and the claims brought against them in the Blackfeet Court. As they have noted, the Plaintiffs' previously raised several arguments challenging Blackfeet Nation jurisdiction, all of which were rejected by this Court. Doc. 27 at 13-20. The principal basis for the Court's rejection of the Plaintiffs' jurisdictional arguments was that "[t]he record at this stage appears to indicate that the BIA cancelled the lease" Doc. 27 at 9-13.

It is clear from the record that the did BIA cancel the lease in 2008, and while Eagle Bear initially appealed the cancellation, it later withdrew its appeal leaving the cancellation decision as the last administrative action of the BIA on the issue. The record is now clear that the BIA never withdrew, rescinded, reversed, amended or otherwise modified the cancellation decision.

Eagle Bear and Brooke have finally set forth their claim regarding the withdrawal of Eagle Bear's appeal on January 5, 2009. Will Brooke now claims

that in January of 2009 a BIA Blackfeet Agency employee (Tracy Tatsey) supposedly called Brooke and asked him to withdraw the Eagle Bear appeal. See Defendants' Exhibit A , Eagle Bear Interrogatory Response No. 10. Brooke further claims discussions with a Blackfeet Nation employee during that same time frame who told him that the lease was in good standing with the Blackfeet Nation. No legal theory supports Brooke's claims. Id.

Even if true (and there appears to be significant dispute as to the truth of Brooke's claims), the action of a BIA Agency employee could not, as this Court has already found, alter the cancellation decision. Doc. 27 at 11-13. Once the cancellation decision was made and Eagle Bear appealed, only the Rocky Mountain Regional Director could rule on the cancellation decision and Eagle Bear's appeal. Id. at 10-11. To this day, no such ruling by the Rocky Mountain Regional Director has been produced. The time for the Rocky Mountain Regional Director to rule has long since expired, the cancellation has become final and is no longer subject to administrative or judicial review.

That the Blackfeet Nation has exercised its sovereign right to exclude Eagle Bear and Brooke from Blackfeet Nation land and secure the campground, does not alter the jurisdictional analysis. Nor does the BIA Rocky Mountain Regional Director's untimely and legally unsupported claim to have the authority to review the 2008 lease cancellation decision 14 years after the fact.

The Blackfeet Nation Defendants won't repeat the exhaustive federal case law on Indian Nation jurisdiction to exclude from its own land or the requirements of exhaustion of Indian nation court remedies. However, primacy of Indian Nation court jurisdiction as expressed in the Ninth Circuit's analysis in *Grand Canyon Skywalk Development LLC v. Sa Nuy Wa Inc.*, 715 F.3d 1196 (9th Cir. 2013) should be the guiding and deciding factor in the case.

In the context of the exhaustion of Indian Nation court analysis, Federal Courts have consistently recognized that Indian Nation courts authority to resolve claims arising out of or requiring the interpretation and application of Federal law. In *Sharber v. Spirit Mountain gaming Inc.*, 343 F.3d 974 (9th Cir. 2003), the Ninth Circuit held that a federal court must stay it hand to permit a tribal court to determine whether it had jurisdiction over a claim brought under the Family Medical Leave Act. *Accord Paddy v. Mulkey*, 656 F.Supp.2d 1241 (D. Nev. 2009). A plaintiff bringing a Title VII case against an Indian Nation school located on Indian nation trust land was required to exhaust tribal court remedies before seeking Federal review. *Vencel v. Bug-O-Nay-Ge-Shig*, 262 F.Supp.2d 1001 (D. Minn. 2003). Even the Federal Government was required to exhaust Indian nation court remedies in an action to evict another Indian from trust land within a reservation. *United States v. Tsosie*, 92 F.3d 1037 (10th Cir. 1996).

Similarly Federal Courts have held that exhaustion of Indian nation court remedies is required when a plaintiff seeks to compel arbitration. *Stock West Inc. v. Confederated Tribes of Colville Reservation*, 873 F.2d 1231 (9th Cir. 1989); *Gaming World International LTD v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 849-852 (10th Cir. 2003). The jurisdictional procedure when an Indian Nation court's jurisdiction is challenged is articulated by the esteemed Judge Canby in his *Nutshell on American Indian Law*.

If a tribal court decides it has jurisdiction, it proceeds with the case. If the federal court later agrees that the tribe had jurisdiction, it cannot relitigate the merits of the dispute. *Iowa Mutual v. LaPlante*, 480 U.S. , 19 (198). The tribal court's application of federal Indian law may be reviewed de novo by the federal court, but the federal court must defer to a tribal court's interpretation of tribal law, and review its factual findings under a clearly erroneous standard. *Little Six, Inc.*, 387 F.3d 753 (8th Cir. 2004).

Canby, William, *American Indian Law in a Nutshell*, 6th Ed., pgs. 239-240.

Based upon the undisputed facts and the principles of Federal Indian law and Indian Nation jurisdiction, in particular the Indian Nation's sovereign right to exclude, the Blackfeet Nation does not clearly lack jurisdiction over either the Plaintiffs or the claims brought against them by the Blackfeet Nation in the Blackfeet Nation Court. There are no serious questions going to the merits of the jurisdictional question.

In the last hearing on this matter, Counsel for the Plaintiffs advised the Court that Plaintiffs had submitted a Freedom of Information Act (FOIA) request to the BIA for all records related to the lease including the 2008 lease cancellation. The Court asked that the Plaintiffs keep the Court apprised of the response to their FOIA request. The BIA did reply to the Plaintiffs' FOIA request and provided over 1,000 documents to the Plaintiffs. There was no document whereby the BIA Rocky Mountain Regional Director reversed, withdrew, set aside, vacated, modified or amended the BIA Blackfeet Agency's June 10, 2008 lease cancellation. Nor was there a written document from the BIA Regional Director, BIA Blackfeet Agency Superintendent or any BIA Blackfeet Agency employee confirming some mysterious agreement and/or request from the BIA to Eagle Bear/Brooke to withdraw the Eagle Bear appeal because Eagle Bear had cured the default for which the lease was cancelled.

In fact there are no other documents in the BIA record which would change the analysis that the former lease was cancelled in 2008. The Blackfeet Nation Defendants would respectfully remind the Court that on June 18, 2021, almost one year ago, the Blackfeet Tribal Business Council wrote to the BIA Rocky Mountain Regional Director setting out the history of the 2008 lease cancellation as the Council understood it, and requested that the BIA either join the Blackfeet Nation

in moving to dismiss the IBIA proceeding or produce a document showing that the lease was not cancelled in 2008.

Having received no response from the BIA Rocky Mountain Regional Director, in July of 2021 the Blackfeet Nation moved to dismiss the IBIA 2017 lease cancellation proceedings as moot. The Regional Director was served with those pleadings. On August 10, 2021 the IBIA stayed the proceeding to allow the BIA to respond to the Blackfeet Nation's June 18, 2021 letter. The BIA Rocky Mountain Regional Director did nothing.

In December of 2021, after intense litigation in this Court, both parties wrote to the BIA asking them to provide documents related to the 2008 lease cancellation or make a decision. On December 13, 2021 the IBIA ordered the BIA Rocky Mountain Regional Director to respond to the Blackfeet Nation's pleadings generated by the Blackfeet Nation's Motion to Dismiss for Mootness; the Regional Director was given 30 days to respond. The Regional Director sought and was granted an additional 30 day up to February 13, 2022 to respond.

After all the delay, instead of filing a responsive pleading as directed by the IBIA, the BIA Rocky Mountain Regional Director filed a Motion for Remand claiming authority to review the 2008 lease cancellation. The Regional Director falsely claimed that the parties' pleadings on the mootness motion contained documents which were not part of the original record before the IBIA. All the

documents filed by the parties were from the BIA administrative record produced by the BIA as the result of an IBIA order in the 2017 lease cancellation appeal.

On March 3, 2022, more than 60 days ago, the IBIA granted the BIA Rocky Mountain Regional Director's motion for remand, vacated any proceedings before the IBIA and vacated the BIA Rocky Mountain Regional Director's decision overturning the BIA Blackfeet Agency Superintendent's decision cancelling the lease and requiring arbitration.

Neither the BIA Rocky Mountain Regional Director or the IBIA offered any legal theory or authority for the BIA to go back 14 years and review a lease cancellation. There is no such authority. Nor are there any other documents, written decisions, or emails from the BIA from 2008 or 2009 reversing, withdrawing, overruling, rescinding, overturning, modifying or amending the 2008 lease cancellation.

In response to Interrogatory questions, Plaintiff Will Brooke asserts that after he filed the Eagle Bear appeal in June of 2008, he waited about six months and then started calling the BIA Blackfeet Agency Office. See Defendants' Exhibit A, Eagle Bear Interrogatory Response No. 10. Brooke further claims that he received a call from Blackfeet Agency employee Tracy Tatsey who told him that the BIA had received and cashed his payment for 2007, that the lease was current and requested that he withdraw his appeal. *Id.*

This Court has already addressed and rejected that argument. Doc. 27 at 11-13. There is no legal authority to support the Plaintiffs' claim that a BIA Blackfeet Agency employee could overrule, reverse or otherwise set aside a decision of the Agency Superintendent. As the Court has stated, once the Agency Superintendent made his decision, only the Regional Director could rule on the appeal after that point. *Id.* at 10-11.

The Blackfeet Nation Defendants have provided substantial authority from both the Federal Courts and the IBIA that verbal representations or advice by the BIA do not create a lease or legal rights, and such advice and representations do not override applicable laws and regulations. *Strom, et al. v. Northwest Regional Director*, 44 IBIA 153, 165-166 (2007); *Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006)(erroneous advice by BIA could not operate to grant rights not authorized by law or inconsistent with the regulations). Individuals dealing with the government are presumed to have knowledge of duly promulgated federal regulations. *Flynn* at 212.

Eagle Bear and Brooke should have known the applicable Federal regulations affecting the lease and their appeal rights in the event of lease cancellation. They should have known that if they did not, as they claim, receive the appropriate notice of default and opportunity to cure the default, that they could have and should have raised that issue in their Notice of Appeal and Statement of

Reasons, thereby preserving their right to cure the default. They should have known that any issues that they did not raise in their initial Notice of Appeal and Statement of Reasons could not be raised 13 years later. They should have known that the only level of authority that could reverse, withdraw or amend the cancellation decision was the Rocky Mountain Regional Director; not some staff person in the Blackfeet Agency.

As for the Bureau of Indian Affairs, waiting for that agency to act is no longer necessary. The BIA has had almost one year from the time the Blackfeet Nation first called upon it to produce any other records related to the 2008 lease cancellation. It has produced nothing. In response to the Court's recent Order regarding the record, the Blackfeet Nation sent a letter to the BIA Rocky Mountain Regional Director demanding that the Regional Director either produce any additional documents related to the 2008 lease cancellation or state that there are other documents which were not already produced as a result of the IBIA's order in the 2017 lease cancellation appeal. See Blackfeet Nation Defendants' Exhibit B, Letter from Blackfeet Tribal Business Council Chairman to Rocky Mountain Regional Director, dated May 11, 2022. In a terse email response, the BIA Regional Director told the Blackfeet Nation to file a Freedom of Information Act request.

It is clear from the record and the findings of this Court, applying the principles enunciated in *United States v. Mitchell*, 463 U.S. 206 (1983) (*Mitchell II*) and *Cobell v. Salazar*, 679 F.3d 909 (D.C. Cir. 2012), that the BIA failed to enforce federal law and regulations and breached its trust responsibility to the Blackfeet Nation to collect the revenue and interest due from Eagle Bear under the former lease. BIA also breached its mandatory duty to enforce trespass law and regulations against Eagle Bear after the lease was cancelled in 2008. See *Kimmitt v. Billings Area Director*, 19 IBIA at 74. (interpreting and applying grazing trespass regulations); *Cheyenne River Sioux Tribe v. Aberdeen Area Director*, 28 IBIA 288 (1995) (applying federal grazing law and regulations). The regulations in effect in 2008 required the BIA to treat a holdover tenant as a trespasser and unless the BIA knew that the tenant was in negotiation with the Indian landowners, the BIA was required to recover possession of the premises and pursue any other legal remedies (in this case unpaid payments and interest). See 25 CFR § 162.623 (2008 Ed.).

Further delay only serves the interests of the Plaintiffs and the BIA's refusal to acknowledge its failures in carrying out its duty to enforce the former lease. The BIA has had ample opportunity to produce any additional documents related to the 2008 lease cancellation. More than 1,000 documents were produced to the Plaintiffs in a FOIA request; none of those documents altered the outcome of the

2008 lease cancellation. Based on the Plaintiffs' assertions of why they withdrew Eagle Bear's appeal of the 2008 lease cancellation, there are no other documents and Plaintiffs do not claim to have any other documents to support their baseless legal theory.

There is no likelihood that the Plaintiffs will prevail on the merits of their jurisdictional challenge. And there are no serious questions going to the merits of their jurisdictional challenge.

2. Because the Plaintiffs Have No Legal Right To Occupy Blackfeet Nation Land Which Was Subject to the Former Lease, They Will Not Suffer Irreparable Injury.

Plaintiffs have asserted that they will suffer irreparable harm if they are not allowed to illegally occupy Blackfeet Nation land and operate the Blackfeet Nation's campground without a lease. Making themselves out to be the victims in this matter, the Plaintiffs assert that they are about to invest thousands of dollars in the campground, that the campground is booked full for the season, and that their global reputation will be ruined if they are not allowed to operate the campground this season. Plaintiffs also complain that guests from around the globe will arrive without any place to stay.

Any injury suffered by Eagle Bear is the result of their own conduct. Eagle Bear had no legal right to occupy the campground in the 2021 season. However because the Blackfeet Nation did not determine to commence the Blackfeet Nation

court action until mid-summer, a decision was made not to interfere with the campground operations last year. That Eagle Bear continues to ignore the fact that the lease was cancelled in 2008, that it withdrew its appeal and the cancellation became final is not the fault of the Blackfeet Nation. Eagle Bear's already rejected argument that a BIA Agency employee could somehow reverse the cancellation decision is not supported by any recognized or accepted legal theory.

Eagle Bear and Brooke fail to acknowledge that the Blackfeet Nation is not a wealthy financial organization. The Blackfeet Indian Reservation makes up 90% of Glacier County, Montana. Glacier County has ranked in the top 100 poorest counties in America for a number of years. According to Forbes Magazine, Glacier County was the poorest county in Montana in 2021. See "*Poorest Counties In Every State 2021*", DePietro, Andr; forbes.com. The Blackfeet Nation relied upon the income from the former lease to fund essential government services and the government itself. Eagle Bear consistently withheld payments and failed to pay the interest due on late payments. While Eagle Bear held money due and owing to the Blackfeet and benefitted from that money for its own purposes (including investment), the Blackfeet went without much needed income.

As recognized by the Ninth Circuit Court of Appeals in *Grand Canyon Skywalk*, 715 F.3d 1196 and *Water Wheel Camp Recreation Area v. Lawrance*, 642 F.3d 803 (9th Cir. 2011), it is the access to valuable Blackfeet Nation land that was

the basis for the former lease agreement. By Eagle Bear's illegal occupation of valuable Blackfeet Nation land while taking millions of dollars in profit from that land, it is the Blackfeet Nation that is suffering irreparable harm, not Eagle Bear or Brooke.

As for the arriving tourists, there are three other campgrounds in the immediate area near the location of the Blackfeet Nation's St. Mary Lake Campground. About one mile away are the Johnson's of St. Mary Campground (owned by a Blackfeet Nation Member), and the Glacier Campground. About eight miles up the road at the other end of beautiful St. Mary Lake is the Blackfeet Nation's Chewing Backbone Campground. Arriving visitors will be welcomed at these established campgrounds.

3. The Balance of the Equities Favors the Blackfeet Nation Defendants.

Because Eagle Bear has no legal right to occupy Blackfeet Nation land, the balance of the equities and hardships clearly favors the Blackfeet Nation Defendants. As set forth above, the Blackfeet Nation is being deprived of the right to use its own valuable land. Eagle Bear has no legal right to occupy that land. On these facts, the equities clearly favor the Blackfeet Nation.

Allowing Eagle Bear to illegally occupy Blackfeet Nation land and take profit from that land without any legal right to do so does not outweigh the Blackfeet Nation's right to use its own valuable land. Any injury to Eagle Bear or

to the people who booked reservations with them are the result of Eagle Bear's own conduct. The former lease was cancelled in 2008 for non-payment of required rents. It was cancelled again in 2017 for the same financial failures.

While Eagle Bear attempted to renew the cancelled lease in 2020, during the height of the Covid-19 pandemic while the Blackfeet Nation was essentially shut down, as soon as the Council became aware of Eagle Bear's attempt, it exercised its right under the former lease to buyout any remainder.

Once the Blackfeet Nation brought suit based on the 2008 lease cancellation, Eagle Bear was on notice that its right to occupy the Blackfeet Nation's land was in serious question. Eagle Bear took the risk of going forward for 2022 without communicating its intent to the Blackfeet Nation and seeking agreement to do so. That is not the fault of the Blackfeet Nation. Once again, Eagle Bear plays the victim of its own conduct.

As already set out, the Blackfeet Nation is being deprive of the right to use its own valuable land. Eagle Bear consistently withheld money due the Blackfeet Nation while it used that money for its own benefit; only paying when forced to do so and still not having paid in full. The Blackfeet Nation no longer wishes to do business with (or be forced to do business with) a dishonest and untrustworthy partner as Eagle Bear has proven to be.

There are no equities in allowing Eagle Bear to illegally remain on Blackfeet Nation land and take millions of dollars in profit that would otherwise go to the Blackfeet Nation, while the Blackfeet People continue to live in poverty. For years Eagle Bear failed to collect tax revenue which clearly was within the sovereign power of the Blackfeet Nation to collect, thereby depriving the Blackfeet Nation and its People of millions of dollars in badly needed revenue.

The balance of the equities and hardships favors the Blackfeet Nation Defendants, not Eagle Bear, Inc. and William Brooke.

4. There is No Public Interest In Enforcing A Cancelled Lease and Depriving the Blackfeet Nation and the Blackfeet People of Critical Revenue.

There is no lease. There is no public interest in enforcing a cancelled lease, especially a lease cancelled for non-payment of required rents including the interest on those rents.

The Blackfeet Nation is not engaging pre-judgment attachment of any property which may belong to the Plaintiffs; it has made that clear to the Plaintiffs. The Blackfeet Nation is telling the Plaintiffs that they will no longer be allowed to illegally occupy Blackfeet Nation trust land. The cases which the Plaintiffs cite regarding the action of the Blackfeet Nation do not involve Indian Nation trust land and do not involve the Blackfeet Nation's sovereign right to exclude people from its own land. No sovereign other than the Blackfeet Nation court has jurisdiction

over Eagle Bear and Brooke's unauthorized activity on Blackfeet Nation land. The Bureau of Indian Affairs abandon its duty long ago. No law prevents the Blackfeet Nation from protecting its own land.

The public interest favors both the recognition of Federal Indian law principles regarding the primacy of Indian Nation court jurisdiction and the exhaustion requirement and enabling Indian Nations to manage their own valuable lands.

The public interest weighs heavily in favor of the Blackfeet Nation Defendants.

B. Applying the Preliminary Injunction Factors.

According to the Ninth Circuit, ““serious questions going to the merits” and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3 1127, 1136 (9th Cir. 2011).

As set forth above, the Plaintiffs cannot meet any of the factors for issuance of a preliminary injunction. There as no serious questions going to the merits of their jurisdictional challenge and the balance of the hardships does not tip sharply in their favor. Nor is there a likelihood of irreparable injury and the public interest does not favor the issuance of a preliminary injunction.

CONCLUSION

The Plaintiffs cannot meet any of the factors for issuing a preliminary injunction. Their Second Motion for Preliminary Injunction and Temporary Restraining Order must be denied.

DATED this 18th day of May, 2022.

___/s/___Joseph_J._ McKay_____
Joseph J. McKay, Attorney-at-Law
Defendants Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2), I hereby certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 point; is double-spaced; and the word count, calculated by Microsoft Office Word, is 5,241 words, excluding the Caption, Table of Contents, Table of Authorities, Exhibit Index and the Certificate of Compliance.

/s/ Joseph J. McKay
Joseph J. McKay, Attorney-at-Law