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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION

FORT BELKNAP INDIAN
COMMUNITY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA;
the UNITED STATES DEPARTMENT OF
INTERIOR; DEB HAALAND, in her
official capacity as United States Secretary
of the Interior; BRYAN NEWLAND, in
his official capacity as Acting Assistant
Secretary of the Interior for Indian Affairs;
DARRYL LACOUNTE, director of the
Bureau of Indian Affairs; RICHARD
GLENN MELVILLE, in his official
capacity as Acting Deputy Bureau
Director, Office of Justice Services; and

Case No. CV-22-103-GF-BMM-JTJ

**PLAINTIFFS' COMPLAINT FOR
DAMAGES FOR:**

(1) DECLARATORY JUDGEMENT

(2) MANDAMUS RELIEF

(3) INJUNCTIVE RELIEF

(4) BREACH OF CONTRACT

(5) BREACH OF CONTRACT

(6) BREACH OF FIDUCIARY DUTY

(7) VIOLATION OF ADMINISTRATIVE

LENORA NIOCE, in her official capacity
as Bureau of Indian Affairs Special Agent
in Charge/Approving Official,

Defendants.

PROCEDURES ACT 5 U.S.C. §§ 701-06

Plaintiff Fort Belknap Indian Community, by and through the undersigned
counsel, respectfully petitions this Court for declaratory, mandamus, injunctive, and
other relief and states as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory, mandamus, and injunctive relief presenting a
federal question within the Court's jurisdiction under the 1851 Treaty of Fort
Laramie, 11 Stat. 749 (1851) (the "1851 Treaty"); the Indian Law Enforcement Reform
Act, 25 U.S.C. § 2801, *et seq.* ("ILERA"); the Tribal Law and Order Act, 25 U.S.C. §
2801 note, Pub. L. No. 111-211, 124 Stat. 2258 (2010) ("TLOA"); the Indian Tribal
Justice Support Act, 25 U.S.C. § 3601; the Indian Self-Determination and Education
Assistance Act, 25 U.S.C. § 5301, *et seq.* ("ISDEAA"); the Snyder Act, 25 U.S.C. § 13;
the Administrative Procedures Act, 5 U.S.C. § 702 ("APA"); federal common law;
and the Declaratory Judgment Act, 28 U.S.C. § 2201, to secure relief for violations of
rights guaranteed thereunder. Jurisdiction is therefore proper pursuant to 28 U.S.C.
§ 1331 (federal question jurisdiction).

- 1 2. Jurisdiction is also proper pursuant to 28 U.S.C. § 1362, which provides that “district
2 courts shall have original jurisdiction of all civil actions, brought by any Indian tribe
3 or band with a governing body duly recognized by the Secretary of the Interior,
4 wherein the matter in controversy arises under the Constitution, laws, or treaties of
5 the United States.”
6
- 7 3. This Court has authority to grant declaratory and injunctive relief pursuant to 28
8 U.S.C. § 2201-02, and its inherent authority to issue equitable relief.
- 9 4. Venue is proper in this Court under 28 U.S.C. § 1391 because Plaintiff Fort Belknap
10 Indian Community is located with the District of Montana, Great Falls Division.
11

12 PARTIES

- 13 5. Plaintiff Fort Belknap Indian Community is a federally recognized Indian tribe that
14 is entitled to receive federal services by virtue of its status as an Indian tribe. *Indian*
15 *Entities Recognized by and Eligible to Receive Services from the United States Bureau of*
16 *Indian Affairs*, 87 Fed. Reg. 4636 (January 28, 2022).
17
- 18 6. The Fort Belknap Indian Reservation is homeland to the Gros Ventre and the
19 Assiniboiné tribes, both of which comprise the government of Fort Belknap Indian
20 Community (the “Tribe”). The Tribe was a signatory to the 1851 Treaty, and the
21 Tribe and its members are beneficiaries of the covenants contained therein. The
22
23
24

1 Tribe's governmental headquarters is located at 656 Agency Main St., Harlem
2 Montana 59526.

3
4 7. Defendant the United States of America is a party to, and is therefore bound by, the
5 obligations it undertook in the 1851 Treaty described herein. It is also responsible
6 for the actions of the other defendant parties described below.

7 8. Defendant the United States Department of the Interior (the "DOI") is a federal
8 cabinet-level agency charged by Congress with fulfilling the Federal Government's
9 treaty and trust responsibility to the Tribe and with implementing the statutes
10 described herein. By statute, the DOI, acting through the Secretary, provides for the
11 day-to-day federal and Tribal law enforcement services on its federally established
12 Fort Belknap Indian Reservation. 25 U.S.C. § 2802.

13
14 9. Defendant Deb Haaland is sued in her official capacity as the Secretary of the DOI
15 ("Secretary"). The Secretary of the DOI is responsible "for providing, or for assisting
16 in the provision of law enforcement services in Indian country" 25 U.S.C. §
17 2802(a). The Secretary, as head of an executive department, reports directly to the
18 President of the United States, *see* 43 U.S.C. § 1451, and is responsible for directing
19 and supervising all operations and activities of DOI, including providing law
20 enforcement services to tribes and supervising expenditure of appropriated funds
21 by the DOI's Bureau of Indian Affairs (BIA) under 25 U.S.C. § 13.
22
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1 10. Defendant Bryan Newland, or his successor, is the Assistant Secretary—Indian
2 Affairs (“Assistant Secretary”) of the DOI BIA and is being sued in his official
3 capacity as an officer and agent of the United States Government. The Assistant
4 Secretary is established under the authority contained in 43 U.S.C. § 1453. The
5 Assistant Secretary is directly responsible with the Secretary for the decisions made
6 by the DOI’s BIA, and its officers and employees in providing law enforcement
7 services to tribes.
8

9 11. Defendant Darryl LaCounte is the director of the BIA and is sued in his official
10 capacity.
11

12 12. Defendant Richard Glenn Melville, or his successor, is being sued in his official
13 capacity as a deputy to Defendant Newland, with the official title of Acting Deputy
14 Bureau Director, Office of Justice Services (“BIA-OJS”). BIA-OJS is the exclusive
15 federal entity charged with maintaining law and order on Indian reservations.
16

17 13. Defendant Lenora Nioce, or her successor, is a Special Agent in Charge/Approving
18 Official for the BIA and is sued in her official capacity.
19

20 14. Collectively, the U.S., the DOI, Secretary Haaland, Assistant Secretary Newland,
21 Director LaCounte, Deputy Bureau Director Melville, and Special Agent/Approving
22 Official Nioce are referred to as “Defendants.”
23

24 STATEMENT OF FACTS

1 15. The Tribe's reservation is approximately 637,000 acres and has approximately 3,182
2 people living within its boundaries that receive tribal law enforcement services.

3 16. The Reservation is Indian country under 18 U.S.C. § 1151.

4 17. The Tribe's members are dependent on federally funded law enforcement officers to
5 protect them and their on-reservation property.

6 18. As a sovereign governing its Reservation and its members, the Tribe has a strong
7 interest in its members' health, well-being, and safety. The population of the
8 Reservation is substantially harmed by violent crime, crimes against children and
9 vulnerable adults, missing persons, drug-related crime, and the resulting impacts to
10 the entire Reservation community.

11 19. The Tribe and Defendants BIA-OJS entered into Contract No. A21AV00237, a Public
12 Law 93-638 Contract ("638 Contract") and an Annual Funding Agreement ("AFA")
13 for law enforcement services in 1997. (Aff. Gary LaMere Jr., ¶ 6, October 20, 2022,
14 attached hereto as **Exhibit A**). A true and correct copy of the Tribe's 638 Contract,
15 No. A21AV00237, is attached hereto as **Exhibit B**.

16 20. Since the initial 638 Contract, the Tribe has seen little increase in the law
17 enforcement budget contained in the AFA. (Aff. LaMere Jr., ¶ 6; Aff. Jeffrey
18 Stiffarm, ¶ 10, October 20, 2022, attached hereto as **Exhibit C**).

1 21. On July 1, 2022, the Tribe submitted its proposed 2022-2023 AFA to BIA-OJS. The
2 Tribe's total request for funding is \$5,294,549.39, which is an increase of
3 \$3,815,050.39.

4
5 22. Tribe's current number of law enforcement officers and criminal investigators is
6 insufficient to fulfill the Defendants' obligations to keep the peace on the Fort
7 Belknap Indian Reservation. For comparison, from 2015 to 2017, the Mescalero
8 Reservation (approximately 463,000 acres) had approximately 3,156 people living
9 within its boundaries receiving tribal law enforcement services and had a personnel
10 budget of over \$2 million. (Aff. LaMere Jr., ¶ 9).

11
12 23. The Tribe's current budget only pays a fraction of comparable BIA positions:

- 13 a. The Tribe's Chief of Police is paid 50% of a BIA Chief of Police;
14 b. Six (6) of the seven (7) Tribal Officers are paid at 70% of a BIA Officer;
15 c. One (1) Criminal Investigator makes approximately 50% of a comparable BIA
16 employee;
17 d. Four (4) Dispatchers are paid at approximately 50% of a comparable BIA
18 Dispatcher
19 e. Secretary is paid at 70% of a BIA secretary.

20
21 (Aff. LaMere Jr., ¶ 8).

1 24. The Tribe's current funding is insufficient to provide the most basic law enforcement
2 services to the Tribe. (Aff. LaMere Jr., ¶ 14).

3 25. As a result, the Tribe experiences a chronic shortage of patrol officers and dispatch
4 personnel. (Aff. LaMere Jr., ¶ 14).

5 26. Because the Tribe's law enforcement resources are currently only providing for
6 minimum staff at minimal pay, the Tribe is currently unable to offer the following
7 law enforcement services:
8

9 a. Victim Specialist/Victim Outreach Coordinator

10 b. Drug Investigator

11 c. Program Specialist

12 d. K-9 Officer and Drug Dog

13 e. School Resource Officer

14 f. Missing and Murdered Indigenous Persons Special Agent

15 (Aff. LaMere Jr., ¶ 14).

16
17 27. With the increased funding included in the proposed 2022-2023 AMA, Tribal law
18 enforcement would be able to hire more patrol officers to provide more patrol to
19 outlining areas of the Reservation on a more frequent basis. The increased funding
20 would also allow for more officer training and professional development. (Aff.
21 LaMere Jr., ¶ 15).

- 1 28. The proposed 2022-2023 AFA allow for the hiring of an additional Supervisory
2 Police Officer, which would bring continuity to the supervision of the Tribal law
3 enforcement by allowing for 24/7 supervisor coverage. (Aff. LaMere Jr., ¶ 16).
4
- 5 29. The proposed 2022-2023 AFA enables Tribal law enforcement to hire three (3)
6 trained and certified criminal investigators, including an investigator dedicated to
7 drug investigations. This would greatly deter serious crime on the Tribe's
8 reservation, which would result in more cases ending in federal convictions. (Aff.
9 LaMere Jr., ¶ 17).
- 10 30. The proposed 2022-2023 AFA enables Tribal law enforcement to hire a K-9 Police
11 Officer and dog to assist in the drug investigations on the Reservation. (Aff. LaMere
12 Jr., ¶ 18).
- 13
- 14 31. The proposed 2022-2023 AFA enables the Tribe to hire a School Resource Office to
15 be stationed out of a Tribal school, and actively take part and participate in anti-
16 drug and anti-gang education, as well as awareness initiatives with Tribal youth.
17 (Aff. LaMere Jr., ¶ 19).
18
- 19 32. The proposed 2022-2023 AFA also enables the Tribe to hire a Victim
20 Specialist/Victim Outreach Coordinator, a Program Specialist, additional
21 Dispatchers, and an additional Secretary. All of these positions would aid in
22 providing adequate and modern law enforcement services to the Tribe. These
23
24

positions will also support compliance with federal regulations and mandates. (Aff. LaMere Jr., ¶ 20).

33. A review of AFAs from 2015 to 2022 show that the Defendants have been underfunding Tribal law enforcement by approximately 50% for salaries and 75% for operational costs. (Aff. LaMere Jr., ¶ 21).

34. In the past, patrol officers have regularly been required to patrol the entirety of the Reservation, many times alone. (Aff. Stiffarm, ¶¶ 4-6).

35. From 2018 to 2021, the FBIC councils had requested additional funding. BIA responded by providing “one time funding” to be used for buying equipment. This funding did not provide for salaries and the equipment excluded firearms necessary for performance of effective law enforcement functions. The “one time funding” also mean the Tribe was ineligible for contract support costs. (Aff. Stiffarm, ¶ 9).

36. Defendants have arbitrarily and capriciously appropriated the Tribe’s 638 contract funds over the years. On August 4, 2022, Defendant BIA-OJS found \$1,213,743.00 and issued it to the Tribe pursuant to Modification No. 6 of the 638 Contract as a base increase and “one time” program funding for a “Period of Performance: 10/01/2020 to 09/30/2023.” Modification No. 6 further provides: “All other terms and conditions remain the same.” A true and correct copy of Modification No. 6 to Contract No. A21AV00237 is attached hereto as **Exhibit D**.

1 37. Lack of funding throughout the years has caused FBIC to regularly encounter
2 compliance issues when completing its annual funding review. (Aff. Stiffarm, ¶ 11).

3 38. The current 2022-2023 AFA is sufficient to fund Tribal law enforcement at the same
4 level as if the Defendants otherwise provided for the operation of the programs.
5 (Aff. LaMere Jr., ¶ 22).
6

7 39. On August 24, 2022, Defendant BIA-OJS issued a letter to the Tribe denying the
8 proposed 2022-2023 AFA and requesting the Tribe resubmit its proposed AFA
9 without the requested increased amount.

10 40. On September 26, 2022, Defendant BIA-OJS issued a letter to the Tribe, partially
11 declining the proposed 2022-2023 AFA for all funding above \$1,353,247. A true and
12 correct copy of Defendant BIA-OJS's partial declination letter is attached hereto as
13 **Exhibit E.**
14

15 41. Defendants' partial declination of the Tribe's proposed 2022-2023 AFA for all
16 funding above \$1,353,247 continues leaving the Tribe without adequate law
17 enforcement services on the reservation.
18

19 CAUSES OF ACTION

20 **COUNT ONE**

21 **Declaratory Judgment**

22 42. The Tribe incorporates all prior allegations as if fully set forth herein.
23
24

1 43. Defendants have obligated themselves as trustees of ensuring law and order on the
2 Tribe's reservation under Article 3 of the 1851 Treaty, which provides that the U.S.
3 "bind themselves to protect the aforesaid Indian nations against the commission of
4 all depredations by the people of the said United States"

5
6 44. Defendants have assumed the obligations of a trustee for ensuring law and order on
7 the Tribe's reservation under the Indian Law Enforcement Reform Act, 25 U.S.C. §
8 2801, *et seq.* ("ILERA"), which provides in relevant part: "The Secretary [of the
9 Interior], acting through the [BIA], shall be responsible for providing, or for assisting
10 in the provision of, law enforcement services in Indian country" 25 U.S.C. §
11 2802(a). Under ILERA, the OJS-BIA "shall be responsible for . . . carrying out the
12 law enforcement functions of the Secretary in Indian country." 25 U.S.C. §
13 2802(a)(1).
14

15 45. Defendants have assumed the obligations of a trustee for ensuring law and order on
16 the Tribe's reservation under the Tribal Law and Order Act, 25 U.S.C. § 2801 note
17 (a)(1), Pub. L. No. 111-211, 124 Stat. 2258 (2010) ("TLOA"), which provides that "the
18 United States has distinct legal, treaty, and trust obligations to provide for the public
19 safety of Indian country"
20

21 46. Defendants have assumed the obligations of a trustee for ensuring law and order on
22 the Tribe's reservation under the Indian Tribal Justice Support Act, 25 U.S.C. § 3601,
23
24

1 which provides that “(1) there is a government-to-government relationship between
2 the United States and each Indian tribe” and “(2) the United States has a trust
3 responsibility to each tribal government that includes the protection of the
4 sovereignty of each tribal government.” 25 U.S.C. § 3601(1)-(2).

5
6 47. Defendants have assumed the obligations of a trustee for ensuring law and order on
7 the Tribe’s reservation under the Indian Self-Determination and Education
8 Assistance Act, 25 U.S.C. § 5301, *et seq.* (“ISDEAA”). 25 U.S.C. 5321(a)(1) specifically
9 provides that “[the Secretary [of the Interior] is directed, upon the request of any
10 Indian tribe by tribal resolution, to enter into a self-determination contract or
11 contracts with a tribal organization to plan, conduct, and administer programs or
12 portions thereof” *See also* 25 U.S.C. § 5304(i) (defining “Secretary” as either the
13 Secretary of Health and Human Services or the Secretary of the Interior or both.”);
14 25 U.S.C. § 5304(j) (defining “self-determination contract” as a contract “between a
15 Tribal organization and the appropriate Secretary for the planning, conduct, and
16 administration of programs or services that are otherwise provided to Indian Tribes
17 and members of Indian Tribes pursuant to Federal law”).
18
19

20 48. Defendants have assumed the obligations of a trustee for ensuring law and order on
21 the Tribe’s reservation under 25 U.S.C. § 13 (the “Snyder Act”), which provides that
22 “[t]he [BIA], under the supervision of the Secretary of the Interior, shall direct,
23
24

1 supervise, and expend such moneys as Congress may from time to time appropriate,
2 for the benefit, care, and assistance of the Indians throughout the United States for . .
3 . the employment of . . . Indian police, Indian judges, and other employees”

4
5 49. As trustee, the Defendants have a fiduciary relationship and obligations of “the
6 highest responsibility and trust in its relationships with Indians,” and its conduct is
7 therefore “judged by the most exacting fiduciary standards.” *Cobell v. Norton*, 240
8 F.3d 1081, 1099 (D.C. Cir. 2001).

9
10 50. Defendants statutory, fiduciary, and treaty duties obligating them to ensuring law
11 and order for the Tribe requires them to provide sufficient financial support for law
12 enforcement services adequate to provide prompt and diligent investigation,
13 reporting, and immediate arrest and punishment of offenders within the
14 reservation.

15
16 51. The Defendants breached their statutory, fiduciary, and treaty duties by failing to
17 adequately fund law enforcement services for the Tribe to protect public safety and
18 ensure law and order within the Tribe’s reservation.

19
20 52. Declaratory, injunctive, and equitable relief are traditional remedies for a violation
21 of trust duties. *Cobell*, 240 F.3d at 1101.

22
23 53. The Tribe is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201,
24 determining that Defendants have violated their statutory, fiduciary, and treaty

obligations to the Tribe by failing to adequately fund law enforcement services for the Tribe to protect public safety and ensure law and order within the Tribe's reservation.

COUNT TWO

Mandamus Relief

54. The Tribe incorporates all prior allegations as if fully set forth herein.

55. 28 U.S.C. § 1361 allows the Court to compel an officer or employee of the U.S. or any agency thereof to perform a duty owed to the plaintiff.

56. Defendants have clear and nondiscretionary statutory, fiduciary, and treaty duties to provide law and order within the Tribe's reservation.

57. Defendants have failed to perform their nondiscretionary duties to the Tribe by failing to adequately fund law enforcement services for the Tribe to protect public safety and ensure law and order within the Tribe's reservation.

58. No adequate administrative remedy is available to the Tribe.

59. The Tribe requests mandamus relief requiring all Defendants to comply with their nondiscretionary treaty, statutory, and fiduciary obligations to the Tribe to protect the Tribe's treaty and trust rights to federally funded law enforcement services sufficient to protect public safety and ensure law and order within the Tribe's reservation.

COUNT THREE

Injunctive Relief

60. The Tribe incorporates all prior allegations as if fully set forth herein.

61. Defendants have nondiscretionary statutory, fiduciary, and treaty duties to provide law and order within the Tribe's reservation.

62. Defendants have failed to perform their nondiscretionary duties to the Tribe by failing to adequately fund law enforcement services for the Tribe to protect public safety and ensure law and order within the Tribe's reservation.

63. Because of Defendants' failure to provide law and order within the Tribe's reservation, the Tribe has suffered irreparable injury and remedies at law are not available to compensate for those injuries.

64. Tribe is entitled to a permanent injunction enjoining Defendants from distributing law enforcement funding at levels below what is required to fulfill the Defendant's treaty, statutory, and fiduciary obligations to the Tribe based on the current law enforcement service population of 3,182 people.

COUNT FOUR

Breach of Contract

65. The Tribe incorporates all prior allegations as if fully set forth herein.

66. Section 1(a)(1) and Section 1(a)(2) of the Tribe's 638 Contract, Contract No.

A21AV00237, incorporates Defendants' statutory duties to fully fund the Tribe's law enforcement programs, providing:

(1) AUTHORITY. This agreement, denoted a Self-Determination Contract . . . , is entered into by the Secretary of the Interior . . . for and on behalf of the United States pursuant to title I of the [ISDEAA] . . . and by the authority of the Fort Belknap Indian Community's tribal government or tribal organization (referred to in this agreement as the "Contractor"). The provisions of title I of the Indian Self-Determination and Education Assistance Act .(25 U.S.C. 450 et seq.) are incorporated in this agreement.

(2) PURPOSE. Each provision of the [ISDEAA] and each provision of this Contract shall be liberally construed for the benefit of the Contractor [Tribe] to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: To manage and further develop the [BIA] Law Enforcement Program serving the Fort Belknap Indian Reservation . . . , including, but not limited to, law enforcement activities.

67. Section 1(d)(1) of the Tribe's 638 Contract, Contract No. A21AV00237, incorporates the Defendants' trust obligations to the Tribe as follows:

(1) TRUST RESPONSIBILITY.

(A) IN GENERAL. The United States reaffirms the trust responsibility of the United States to the Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of the Individual Indians.

(B) CONSTRUCTION OF CONTRACT. Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians.

1 The Secretary shall act in good faith in upholding such trust
2 responsibility.

3 68. Modification No. 6 to the 638 Contract provides the funding amount “shall
4 not be less than the applicable amount determined pursuant to Section 106(a)
5 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.
6 5301 et. Seq.).”

7 69. Defendants have breached their contractual obligations to the Tribe by
8 partially declining the Tribe’s 2022-2023 AFA and paying only \$1,353,247.
9

10 70. Defendants’ partial declination of the Tribe’s proposed 2022-2023 AFA for all
11 funding above \$1,353,247 constitutes a material breach of the Contract.

12 71. Defendants are liable to the Tribe for monetary damages in an amount to be
13 determined at trial, including the direct and indirect program costs incurred
14 by the Tribe, *see* 25 U.S.C. § 5304(c) and (f).
15

16 COUNT FIVE

17 Breach of Contract (Anticipatory Repudiation)

18 72. The Tribe incorporates all prior allegations as if fully set forth herein.

19 73. The Tribe’s 638 Contract, Contract No. A21AV00237, incorporates the Defendants’
20 statutory duty to fully fund the Tribe’s law enforcement services.
21

22 74. Despite the incorporation of Defendants’ statutory duties, Section (1)(b)(4) of
23 the Tribe’s 638 Contract, Contract No. A21AV00237, states:
24

FUNDING AMOUNT. Subject to the availability of appropriations, the Secretary shall make available to the Contractor [Tribe] the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the [ISDEAA] (25 U.S.C. 450j-1).

75. Modification No. 6 to the 638 Contract provides the funding amount “shall not be less than the applicable amount determined pursuant to Section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et. Seq.).” Modification No. 6 further provides: “This amount is subject to the availability of appropriation.”

76. Defendants remain liable to the Tribe under ISDEAA, the provisions of which are incorporated into the Tribe’s 638 Contract, Contract No. A21AV00237, for the full amount of the contract and support costs regardless of whether sufficient appropriated funds exist. *See Ramah Navajo Chapter v. Salazar*, 644 F.3d 1054, 1057 (10th Cir. 2011) (quoting *Cherokee Nation of Oklahoma v. Leavitt*, 543 U.S. 631, 125 S. Ct. 1172 (2005) (“[I]f the amount of an unrestricted appropriation is sufficient to fund the contract, the contractor is entitled to payment even if the agency has allocated the funds to another purpose or assumes other obligations that exhaust the funds.”)).

77. Defendants’ partial declination of the Tribe’s proposed 2022-2023 AFA for all funding above \$1,353,247 non the basis the funding is subject to

1 appropriation is an anticipatory breach of the Defendants' contractual
2 obligations to fully fund the Tribe's law enforcement programs.

3 78. Defendants are liable to the Tribe for monetary damages in an amount to be
4 determined at trial, including the direct and indirect program costs incurred
5 by the Tribe, *see* 25 U.S.C. § 5304(c) and (f).
6

7 **COUNT SIX**

8 **Breach of Fiduciary Duty**

9 79. Defendants have undertaken a fiduciary relationship to the Tribe by
10 controlling and supervising law enforcement funding through federal
11 actions. *United States v. Mitchell*, 463 U.S. 206, 225 (1983) ("Where the Federal
12 Government takes on or has control or supervision over tribal monies or
13 properties, the fiduciary relationship normally exists with respect to such
14 monies or properties (unless Congress has provided otherwise) even though
15 nothing is said expressly in the authorizing or underlying statute . . .").
16
17

18 80. All funds held by the U.S. for Indian Tribes are held in trust. *Rogers v. United*
19 *States*, 697 F.2d 886, 890 (9th Cir. 1983).

20 81. A trustee is accountable in damages for breaches of trust. *Mitchell*, 463 U.S. at
21 226.
22
23
24

1 82. Defendants' failure to expend sufficient funds in the best interest of the Tribe
2 is a breach of fiduciary duties that has directly injured the Tribe such that the
3 Tribe lacks adequate law enforcement functions on the Reservation.

4
5 83. The Tribe is entitled to reimbursement and restitution from Defendants of
6 funds the Tribe spent on law enforcement functions that should have been
7 funded and provided by Defendants, in an amount to be determined at trial.

8
9 **COUNT SEVEN**

10 **Violation of Administrative Procedures Act, 5 U.S.C. §§ 701-06**

11 84. The Tribe incorporates all prior allegations as if fully set forth herein.

12 85. The Tribe requested the Defendants to approve the Tribe's 2022-2023 AFA in July
13 2022.

14 86. Defendant agencies DOI and BIA-OJS has unlawfully withheld or denied action on
15 the Tribe's 2022-2023 AFA.

16 87. The Tribe requests injunctive relief pursuant to 5 U.S.C. §§ 705-06 compelling the
17 Defendant agencies to take immediate action that has otherwise been unlawfully
18 withheld or denied with respect to the Tribe's 2022-2023 AFA.

19
20 88. The Tribe is entitled to its attorney fees and costs under the Equal Access to Justice
21 Act, 5 U.S.C. § 504(a)(1), which requires an agency conducting an adversary
22
23
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1 adjudication to award the prevailing party its fees and other expenses incurred by
2 that party in connection with the proceeding.

3
4 **REQUEST FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests the Court enter judgment in its
6 favor against Defendants, and award the following relief:

- 7 A. Issue a declaratory judgment that Defendants have breached their statutory,
8 fiduciary, and treaty duties, and failed to fulfill their legal obligations to the
9 Tribe to adequately provide law and order within the Tribe's reservation;
10
11 B. Issue a writ of mandamus requiring all Defendants to comply with their
12 nondiscretionary treaty, statutory, and fiduciary obligations to the Tribe to
13 protect the Tribe's treaty and trust rights to federally funded law enforcement
14 services sufficient to protect public safety and ensure law and order within
15 the Tribe's reservation;
16
17 C. Issue injunctive relief requiring Defendants to take immediate action to
18 remedy their failures, including immediate approval of the Tribe's proposed
19 AFA;
20
21 D. Award the Tribe monetary damages in an amount to be proven at trial;
22
23 E. Award the Tribe restitution and reimbursement in an amount to be
24 determined at trial;

1 F. Award the payment of interest on the Tribe's monetary damages claims
2 pursuant to the Contract Disputes Act, 41 U.S.C. § 7109;

3 G. Award the Tribe its costs and attorney fees incurred herein under 28 U.S.C. §
4 2412 and 5 U.S.C. § 504, and any other applicable law;

5
6 H. Grant the Tribe such other relief as this Court may deem just and proper.

7 DATED this 25th day of October 2022. MATT LAW OFFICE, PLLC

8
9 /s/ Terryl T. Matt
Terryl T Matt, Esq.

10 Attorneys for Plaintiffs,
11 FORT BELKNAP INDIAN
12 COMMUNITY
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