UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 25-2375

Lower Brule Sioux Tribe, a federally recognized Indian tribe,

Plaintiff – Appellant,

v.

United States Department of Interior, et al.,

Defendants – Appellees.

Appeal from the United States District Court
for the District of South Dakota (Central Division)
3:21-cv-03018-RAL

The Honorable Roberto A. Lange
Chief Judge, U.S. District Court

APPELLEES' BRIEF

RONALD A. PARSONS, JR.
UNITED STATES ATTORNEY
Alexis A. Warner
Assistant U.S. Attorney
U.S. Attorney's Office
325 S. 1st Ave. Suite 300
Sioux Falls, SD 57101-2638
(605) 357-2320

SUMMARY AND STATEMENT REGARDING ORAL ARGUMENT

The Lower Brule Sioux Tribe ("the Tribe"), appeals the district court's final judgment dismissing its original Complaint challenging Findings and Determinations disallowing costs and alleging a failure to provide technical assistance. The Tribe also appeals the district court's order granting summary judgment to the government on the Tribe's amended overcollection claim.

The government opposes the Tribe's arguments. The district court properly dismissed the Tribe's original Complaint because the Tribe failed to exhaust the mandatory administrative remedies available to it. Likewise, the court properly granted summary judgment on the Tribe's overcollection claim because the Tribe's arguments are unsupported by law or fact.

For these reasons, the government respectfully submits that the facts and legal arguments are adequately presented in the briefs and record, and that oral argument would not significantly aid the decisional process.

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JURISDICTIONAL STATEMENT

The district court entered summary judgment dismissing the Tribe's Amended Complaint on May 13, 2025. App. 511, R. Doc. 86, Add. 51. The Tribe timely appealed on July 11, 2025. R. Doc. 88. The dismissal of the Tribe's original Complaint on the government's motion to dismiss is now properly reviewable as part of the final judgment disposing of all claims. App. 86-114, R. Doc. 27, at 1-29, Add. 1-29. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.[1]

[1] References to Appellant's Appendix are denoted by "App.," followed by the appropriate Bates number. References to Appellant's Addendum are denoted by "Add.," followed by the appropriate Bates number. References to filings in the district court record are denoted by "R. Doc.," followed by the docket entry and page number. References to Appellant's Brief are denoted by "AB," followed by the appropriate page number. Appellant's Appendix and Appellant's Addendum contain three filings that appear in both submissions. For clarity, citations to those materials include references to both the Appendix and Addendum.

STATEMENT OF THE ISSUES

I. WHETHER THE DISTRICT COURT PROPERLY DISMISSED THE TRIBE'S ORIGINAL COMPLAINT (1) CHALLENGING FINDINGS AND DETERMINATIONS DISALLOWING COSTS, AND (2) ALLEGING A FAILURE TO PROVIDE TECHNICAL ASSISTANCE FOR LACK OF SUBJECT MATTER JURISDICTION.

Pueblo of Zuni v. U.S., 467 F. Supp. 2d 1099 (D.N.M. 2006)
Bowman Constr. Co. v. United States, 154 Fed. Cl. 127 (Fed. Cl. 2021)
Fed. R. Civ. P. 12(b)

II. WHETHER THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE GOVERNMENT ON THE TRIBE'S OVERCOLLECTION CLAIM.

Pueblo of Zuni v. U.S., 467 F. Supp. 2d 1099 (D.N.M. 2006)
Bowman Constr. Co. v. United States, 154 Fed. Cl. 127 (Fed. Cl. 2021)
Fed. R. Civ. P. 56

STATEMENT OF THE CASE

A. Statutory Background.

1. Tribally Controlled Schools Act ("TCSA").

In 1988, Congress enacted the TCSA to further self-determination in the provision of Indian education by tribal entities. 25 U.S.C. § 2501. The TCSA acknowledges "that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and that those needs may best be met through a grant process." 25 U.S.C. § 2501(d)(2)-(3) (numbering omitted). The TCSA outlines eligibility requirements for receipt of federal grants from the Bureau of Indian Education ("BIE") to tribally controlled schools and allows tribes to use the grant funds to support tribally controlled school programs. 25 U.S.C. §§ 2502 *et seq*. The TCSA incorporates provisions of the Indian Self-Determination and Education Assistance Act ("ISDEAA") related to single audits and grant disputes. *See* 25 U.S.C. § 2507.

Cost disallowance disputes under the TCSA are governed by select provisions of the ISDEAA. 25 U.S.C. § 2507(a)(8) and (e); *see also* 25 C.F.R. § 44.110(a)(4) and (b) (applying 25 C.F.R. part 900, Subpart N to grants under the TCSA). The TCSA explicitly incorporates the ISDEAA provisions which in turn incorporate the Contracts Disputes Act ("CDA"). 25 U.S.C. § 2507(e) (incorporating ISDEAA contract dispute provisions found at 25 U.S.C. § 5331). The ISDEAA's contract dispute provisions create a mandatory administrative exhaustion scheme, including for claims arising under TCSA grants. 25 U.S.C. §§ 5331(a) and (d).

2. The ISDEAA.

In 1975, Congress enacted the ISDEAA to help Indian tribes assume responsibility for aid programs that benefit their members. *See* 25 U.S.C. §§ 5301 *et seq*. Under the ISDEAA, a tribe may enter into "self-determination contracts"[2] with federal agencies to take control of a variety of federally funded programs. 25 U.S.C. § 5321. A contracting tribe is eligible to receive the amount of money the government would have otherwise spent on executing/providing the program. 25 U.S.C. § 5325.

3. Single Audit Requirement.

For each fiscal year in which a tribal organization receives or expends funds pursuant to an ISDEAA contract or TCSA grant, the tribal organization must submit a single-agency audit report. 25 U.S.C. §§ 2507(a)(1) and 5305(f).[3] The audit[4] must be "conducted by an independent auditor in accordance with generally accepted government auditing standards" and submitted to the appropriate agency. 31 U.S.C.

[2] "'[S]elf determination contract' means a contract entered into . . . between a Tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services that are otherwise provided to Indian Tribes and members of Indian Tribes pursuant to Federal law[.]" 25 U.S.C. § 5304(j).

[3] Specifically, "the tribal organization . . . shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of Title 31." *See* 25 U.S.C. § 5305(f)(1) (referencing the Single Audit Act found at 31 U.S.C. §§ 7501 *et seq*.).

[4] Auditor requirements for the single-agency audit are set forth in 31 U.S.C. § 7502(e).

§ 7502(c). Pursuant to the Single Audit Act, the tribal organization submits a reporting package, including the auditor's report, to a Federal clearinghouse. 31 U.S.C. § 7502(h). The designated agency is then required to "assess the quality of the audit[] conducted[.]" 31 U.S.C. § 7504(a)(2). The respective secretary must give notice as to disallowance of costs within three hundred and sixty-five days of receipt of the annual single-agency audit report. 25 U.S.C. §§ 2507(a)(8) and 5325(f).

"The Indian Affairs (IA) Division of the Internal Evaluation and Assessment (DIEA) has been designated as the office to receive Single Audit reports from Indian Tribes and Tribal organizations." U.S. Department of the Interior, Bureau of Indian Affairs, Single Audit Report Handbook 5 IAM 2-H, Issued August 26, 2016 at Chap. 1 ("2016 Handbook").[5] The DIEA may designate an amount spent as a "questioned cost" in the event of a "deferred revenue deficit issue."[6] *Id.* p. 2, K.(4).[7] The

[5] Publicly available at https://www.bia.gov/sites/bia.gov/files/assets/public/raca/handbook/pdf/5-IAM-2H-Single-Audit-Report-HB_OIMT.pdf. The 2016 Handbook was the policy in place at the time the Findings and Determinations at issue in this case were issued. BIA subsequently updated its Single Audit Report Handbook in 2021, which is the current version. U.S. Department of the Interior, Bureau of Indian Affairs, Single Audit Report Handbook 5 IAM 2-H, issued October 28, 2021 (publicly available at https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/5-IAM-2-H_SAR-Handbook_FINAL_Signed_508.pdf).

[6] Here, the Tribe's TCSA unearned revenue deficit is the product of forward-funded unearned grant revenue ("deferred revenue") associated with unspent program funds not maintained or invested in accordance with 25 U.S.C. § 2506(b)(2).

[7] The 2016 Handbook identifies how a deferred revenue deficit issue may arise: "A review of the recipient's financial statement will occasionally disclose one or more of the following conditions: a deficit cash balance in the general fund; insufficient balances in cash and investments to cover deferred revenue in the special revenue

Awarding Official issues a written decision—labeled a Findings and Determinations Memorandum—as to "whether the audit findings have been addressed satisfactorily and whether questioned costs have been disallowed (sustained) or reinstated (allowed)." *Id.* p. 1, F. If a questioned cost is "disallowed" then the Awarding Official issues a formal notice letter, attaching a copy of the Findings & Determinations. *Id.* p. 3, 3(b).

4. The CDA.

In the event of a post-award contract dispute, the ISDEAA grants federal district courts original jurisdiction "over any civil action or claim against the appropriate Secretary arising under this chapter and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this chapter." 25 U.S.C. § 5331(a); *see also* 25 U.S.C. 2507(e) (incorporating the ISDEAA's dispute process). Section 5331(d) provides, in part: "Chapter 71 of Title 41 [the Contracts Dispute Act] shall apply to self-determination contracts[.]" 25 U.S.C. § 5331(d).

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fund; or amounts "due from" other funds to the special revenue fund. Each of these situations warrants further scrutiny and deficit balances or amounts "due from" other funds should be considered for potential misapplication of funds. If it is determined that IA funds have been misapplied, the AO/ELO will document the misapplication of funds by issuing an F&D to take the following actions: 1) Recovery of Misapplied Funds … 2) Limit Allowances …." 2016 Handbook, p. 6.

The CDA provides a mandatory administrative exhaustion scheme applicable to disputes between government contractors or grant recipients and the United States. The first step in the CDA process is that "[e]ach claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision." 41 U.S.C. § 7103(a). The CDA further provides that "[f]ailure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim . . . ." *Id.* § 7103(f)(5).

The ISDEAA contractor, or TCSA grant recipient, thereafter, has the option of appealing a contracting officer's decision to: (1) the Civilian Board of Contract Appeals (within 90 days of the decision), *id.* § 7104(a), 25 U.S.C. § 5331(d); (2) the United States Court of Federal Claims (within 12 months of a decision), 41 U.S.C. § 7104(b)(1), (3); or (3) a federal district court (within 12 months of a decision), *id.* § 7104(b)(3), 25 U.S.C. § 5331(a). Finally, the CDA provides that "[t]he contracting officer's decision on a claim is *final and conclusive* and *is not subject to review* by any forum, tribunal, or Federal Government agency, *unless an appeal or action is timely commenced* as authorized by [the CDA] . . . ." 41 U.S.C. § 7103(g) (emphasis added).

B. Factual Background.

The Tribe is a federally recognized Indian tribe operating, in part, under grants from, or contracts with, the Bureau of Indian Affairs ("BIA") under the ISDEAA, and the BIE under the TCSA. 25 U.S.C. §§ 2501 *et seq.*; App. 1 at ¶ 1, App. 3 at ¶ 6; R. Doc. 1, at ¶¶ 1, 6. The Tribe's use of TCSA grant funds gave rise to a finding and determination of disallowed costs for Fiscal Years ("FY") 2017 and 2018. App. 37 at ¶ 5, R. Doc. 12, at ¶ 5. Bills for Collection were issued to the Tribe by the Department of Interior ("DOI") for FY 2017 and 2018, which resulted in the federal debt that is the subject of this litigation. App. 40 at ¶ 29, App. 41 at ¶ 39, R. Doc. 12, at ¶¶ 29, 39.

1. FY 2017 Audit Report.

On November 21, 2018, the Tribe submitted its annual audit report for Fiscal Year Ended September 30, 2017, to the Federal Audit Clearinghouse. App. 149 at ¶ 2, R. Doc. 62, at ¶ 2. On December 3, 2018, the DIEA, issued a memorandum to the BIA Great Plains Regional Director regarding the Tribe's FY 2017 audit report. App. 150 at ¶ 3, R. Doc. 62, at ¶ 3.[8] On March 8, 2019, the Great Plains Regional Director sent a notice of audit findings to the Tribe advising that the total amount of Indian Affairs unearned (advanced) funds that were not covered by a sufficient amount of cash was $3,679,223, and requesting the Tribe provide an update on the finding with supporting documentation. App. 150 at ¶ 4, R. Doc. 62, at ¶ 4.[9] On March 20, 2019, the BIA, Great Plains Regional Office, issued its FY 2017 Findings

[8] A copy of the DIEA memorandum is found at App. 164-166, R. Doc. 64-1, at 1-3.
[9] A copy of the March 8, 2019, letter is found at App. 167, R. Doc. 64-2.

and Determinations with respect to the Tribe's audit report for Fiscal Year Ended September 30, 2017 ("FY 2017 Report"). App. 150 at ¶ 5, R. Doc. 62, at ¶ 5.[10]

The FY 2017 Report was mailed to the Honorable Boyd Gourneau, Chairman of the Lower Brule Sioux Tribe. App. 150 at ¶ 6, R. Doc. 62, at ¶ 6. The mailing was sent via Certified Mail with a Return Receipt requested. App. 150 at ¶ 7, R. Doc. 62, at ¶ 7. The return receipt indicates the mailing was received by the Tribe in March 2019 and signed for by Trish Lundell. App. 150 at ¶ 8, R. Doc. 62, at ¶ 8.[11] The cover letter accompanying the FY 2017 Report highlighted the Tribe's "right to dispute any information contained in the Awarding Official's final decision" by appealing to the (1) Civilian Board of Contract Appeals within 90 days of receipt or (2) the Court of Federal Claims within 12 months of receipt. App. 151 at ¶ 9, R. Doc. 62, at ¶ 9. Assuming the mailing was received on March 31, 2019, the respective appeal dates would have run on approximately July 1, 2019, for appeal to the Civilian Board of Contract Appeals, and March 31, 2020, for appeal to the Court of Federal Claims. App. 151 at ¶ 10, R. Doc. 62, at ¶ 10.

The FY 2017 Report sustained questioned costs in the amount of $3,679,223 because the Tribe "used forward funded grant monies to fund other programs and general fund activities." App. 151 at ¶¶ 12-13, R. Doc. 62, at ¶¶ 12-13. But the Tribe did not appeal the FY 2017 Report. App. 151 at ¶ 11, R. Doc. 62, at ¶ 11;

[10] A copy of the FY 2017 Report is found at App. 168-171, R. Doc. 64-3, at 1-4.
[11] A copy of the return receipt is found at App. 172, R. Doc. 64-4.

App. 306, R. Doc. 66-2, at 6 (Tribe admitting it did not appeal the FY 2017 Findings and Determinations). In fact, to the contrary, Debra Nies, the Tribal Comptroller, responded on behalf of the Tribe: "There is no disagreement with this finding. The Tribe's management is working towards rectifying the continued overspending of funds that result in the deficient fund balances. Management will strive to maintain the funds for federal programs in the restricted savings account and transfer as needed to cover expenditures." App. 151 at ¶ 14, R. Doc. 62, at ¶ 14. In the "Awarding Official's Determination," the FY 2017 Report concluded that "[s]ince the Tribe could not provide any documentation of cash on hand, my determination is to sustain the questioned costs of $3,679,223. In addition, the Regional Office will be issuing a payment restriction letter to remedy the repeat finding." App. 152 at ¶ 15, R. Doc. 62, at ¶ 15.

On or about March 30, 2020, the BIA, Great Plains Regional Office, requested that the DOI's Interior Business Center issue a Bill of Collection to the Tribe, with instructions to credit for collection the sum of $3,679,223. App. 152 at ¶ 16, R. Doc. 62, at ¶ 16. The request for a Bill of Collection incorrectly referenced two BIA lines of accounting. That error was corrected in the June 10, 2020, Bill of Collection which reflects a single BIE line of accounting. App. 152 at ¶ 17, R. Doc. 62, at ¶ 17.

On June 10, 2020, the DOI issued a Bill of Collection to the Tribe related to the FY 2017 Report (Bill No. 1801914086) for the sum of $3,679,223. App. 152 at

¶ 18, R. Doc. 62, at ¶ 18.[12] On August 10, 2020, the DOI issued a "1st Dunning Notice" (late notice) to the Tribe for Bill No. 1801914086. App. 152 at ¶ 19, R. Doc. 62, at ¶ 19.[13] The Dunning Notice stated, in part, "If payment is not received within 30 days of this notice, or our office has not been notified of the circumstances delaying payment, further collection action will be initiated, such as referral to the Department of Treasury for collection." App. 152 at ¶ 20, R. Doc. 62, at ¶ 20.

On December 9, 2020, the DOI referred Bill No. 1801914086 to the Department of Treasury for collection. The Department of Treasury, Fiscal Service, conducted approximately forty-seven (47) offsets against federal monies owed to the Tribe to satisfy the debt arising out of Bill No. 1801914086, one of which was reversed. App. 153 at ¶ 21, R. Doc. 62, at ¶ 21.[14] That is, the offset of $1,400,218 on or about April 30, 2021, which funds represented Indian Health Services CARES Act funding granted to the Tribe, was reversed and refunded to the Tribe on or about June 14, 2021. App. 153 at ¶ 22, R. Doc. 62, at ¶ 22.[15]

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[12] A copy of the Bill of Collection related to the FY 2017 Report (Bill No. 1801914086) can be found at App. 287-89, R. Doc. 65-2, at 1-3.
[13] A copy of the 1st Dunning Notice can be found at App. 290, R. Doc. 65-3.
[14] In support of its motion for summary judgment, the government provided a 5-tabbed Excel spreadsheet reflecting Indian Affair records as it pertains to the Tribe and FY 2017 and FY 2018. *See* App. 267 at ¶ 4, Exh. 1, App. 273-286 (printed Exh. 1), R. Doc. 65, at 2. A hard copy of the Excel spreadsheet is being provided to the Court via CD and will be cited as "Gov. Excel spreadsheet" followed by the appropriate tab number.
[15] *See* Gov. Excel spreadsheet, tab 3.

The following amounts have been collected to partially satisfy the debt arising out of the FY 2017 Report:

$2,665,349.64	Collected posted to principal
$441,626.71	Collected posted to interest, administrative fees, and penalties
$667.35	Collected for Treasury fees
$3,107,643.70	Total amount collected

App. 153 at ¶ 23, R. Doc. 62, at ¶ 23.[16] The unpaid principal balance arising from the FY 2017 Report is $1,013,873.36. App. 153 at ¶ 24, R. Doc. 62, at ¶ 24.[17] The FY 2017 debt is currently recalled/suspended because of the current litigation. App. 153 at ¶ 25, R. Doc. 62, at ¶ 25. Because of its suspended/recalled status, no interest or fees are accruing. App. 153 at ¶ 26, R. Doc. 62, at ¶ 26.

2. FY 2018 Audit Report.

On July 2, 2019, the Tribe submitted its annual audit report for Fiscal Year Ended September 30, 2018 (Report No. ARTT 2018-6075) to the Federal Audit Clearinghouse. App. 154 at ¶ 27, R. Doc. 62, at ¶ 27. On November 5, 2019, the BIA, Great Plains Regional Office, issued its FY 2018 Findings and Determinations with respect to the Tribe's FY 2018 single audit report (Report No. ARTT 2018-6507) ("FY 2018 Report"). App. 154 at ¶ 28, R. Doc. 62, at ¶ 28.[18]

On November 5, 2019, the FY 2018 Report was mailed to the Honorable Clyde J.R. Estes, Chairman of the Lower Brule Sioux Tribe. App. 154 at ¶ 29, R.

[16] *See* Gov. Excel spreadsheet, tab 1.
[17] *See* Gov. Excel spreadsheet, tab 3.
[18] A copy of the FY 2018 Report is found at App. 177-180, R. Doc. 64-6, at 1-4.

Doc. 62, at ¶ 29. The mailing was sent via Certified Mail with a Return Receipt requested. App. 154 at ¶ 30, R. Doc. 62, at ¶ 30. Documentation shows the mailing was received by the Lower Brule Sioux Tribe on November 8, 2019, and signed for by Trish Lundell. App. 154 at ¶ 31, R. Doc. 62, at ¶ 31.[19] The cover letter accompanying the Findings and Determinations highlighted the Lower Brule Sioux Tribe's "right to dispute any information contained in the Awarding Official's final decision" by appealing to: (1) the Civilian Board of Contract Appeals within 90 days of receipt or (2) the Court of Federal Claims within 12 months of receipt. App. 154 at ¶ 32, R. Doc. 62, at ¶ 32.[20] Given the receipt date of November 8, 2019, the respective appeal dates would have run on approximately February 6, 2020, for appeal to the Civilian Board of Contract Appeals, and November 9, 2020, for appeal to the Court of Federal Claims. App. 154 at ¶ 33, R. Doc. 62, at ¶ 33.

The BIA's FY 2018 Report sustained questioned costs in the amount of $3,552,860 because the Tribe "used forward-funded grant monies to fund other program and general fund activities." App. 154-55 at ¶¶ 35, 37, R. Doc. 62, at ¶¶ 35, 37.[21] The Tribe did not appeal the FY 2018 Report. App. 154 at ¶ 34, R. Doc. 62, at ¶ 34. Rather, the Tribe responded that it would "continue to look for ways to

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[19] A copy of the return receipt is found at App. 181, R. Doc. 64-7.
[20] *See* App. 177-180, R. Doc. 64-6, at 1-4.
[21] *See id.*

improve the oversight over accounting records for all parts of the Tribe as a whole." App. 155 at ¶ 36, R. Doc. 62, at ¶ 36.[22]

On June 10, 2020, the DOI issued a Bill of Collection related to the FY 2018 Report to the Tribe (Bill No. 1801914087) for the sum of $3,552,860. App. 155 at ¶ 38, R. Doc. 62, at ¶ 38.[23] The DOI referred Bill No. 1801914087 to the Department of the Treasury, Fiscal Service for offsets. App. 155 at ¶ 39, R. Doc. 62, at ¶ 39. The Department of Treasury, Fiscal Service conducted eighteen (18) offsets against federal monies owed to the Tribe to satisfy the debt arising out of the FY 2018 Findings and Determinations, totaling $671,794.92. App. 155 at ¶ 40, R. Doc. 62, at ¶ 40.[24]

On April 30, 2021, the BIA, Great Plains Regional Office, issued a Revised FY 2018 Findings and Determinations, in which the BIA determined that the questioned costs identified in Finding #2018-004 were a duplication of the FY 2017 questioned costs, therefore the questioned costs in the amount of $3,552,860 were reinstated. App. 155 at ¶ 41, R. Doc. 62, at ¶ 41.[25] The collection made against the FY 2018 debt was refunded in the amount of $671,794.92 and then applied to the

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[22] *See id.*
[23] A copy of the Bill of Collection related to the FY 2018 Report (Bill No. 1801914087) is found at App. 294-96, R. Doc. 65-4, at 1-3.
[24] *See* Gov. Excel spreadsheet, tab 4.
[25] A copy of the Revised FY 2018 Findings and Determinations is found at App. 183-84, R. Doc. 64-8, at 1-2.

Bill related to FY 2017 debt on June 15, 2021. App. 155 at ¶ 42, R. Doc. 62, at ¶ 42.[26]

3. FY 2020 Audit Report.

For its FY 2020 audit report, the Tribe made what it called "prior period adjustments" for its TCSA fund. App. 156 at ¶ 43, R. Doc. 62, at ¶ 43. To justify these adjustments, the Tribe claimed that it did not attribute indirect costs to the School fund since FY 2010. App. 156 at ¶ 44, R. Doc. 62, at ¶ 44. The Tribe used the indirect costs rates for the respective fiscal year to account for expenses incurred by the Tribe that related to its administration of its schools. App. 156 at ¶ 45, R. Doc. 62, at ¶ 45. The Tribe thereby purported to reduce its deferred revenue balance for the School fund financial statement. App. 156 at ¶ 46, R. Doc. 62, at ¶ 46. The "prior period adjustments" were made retroactively beginning with FY 2010. App. 156 at ¶ 47, R. Doc. 62, at ¶ 47. The Tribe submitted its FY 2020 audit to the Federal audit clearinghouse on December 30, 2021. App. 156 at ¶¶ 48-49, R. Doc. 62, at ¶¶ 48-49.[27]

The following timeline provides an abbreviated snapshot of the relevant events relating to the FY 2017 Report, which is the only agency decision that created the debt in question in this litigation:[28]

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[26] *See* Gov. Excel spreadsheet, tab 4.

[27] A copy of the Tribe's FY 2020 annual report is found at App. 185-265, R. Doc. 64-9, at 1-81.

[28] In its Amended Complaint, the Tribe claims that "[i]t is unclear whether administrative costs, interest, and penalties were collection in connection with the

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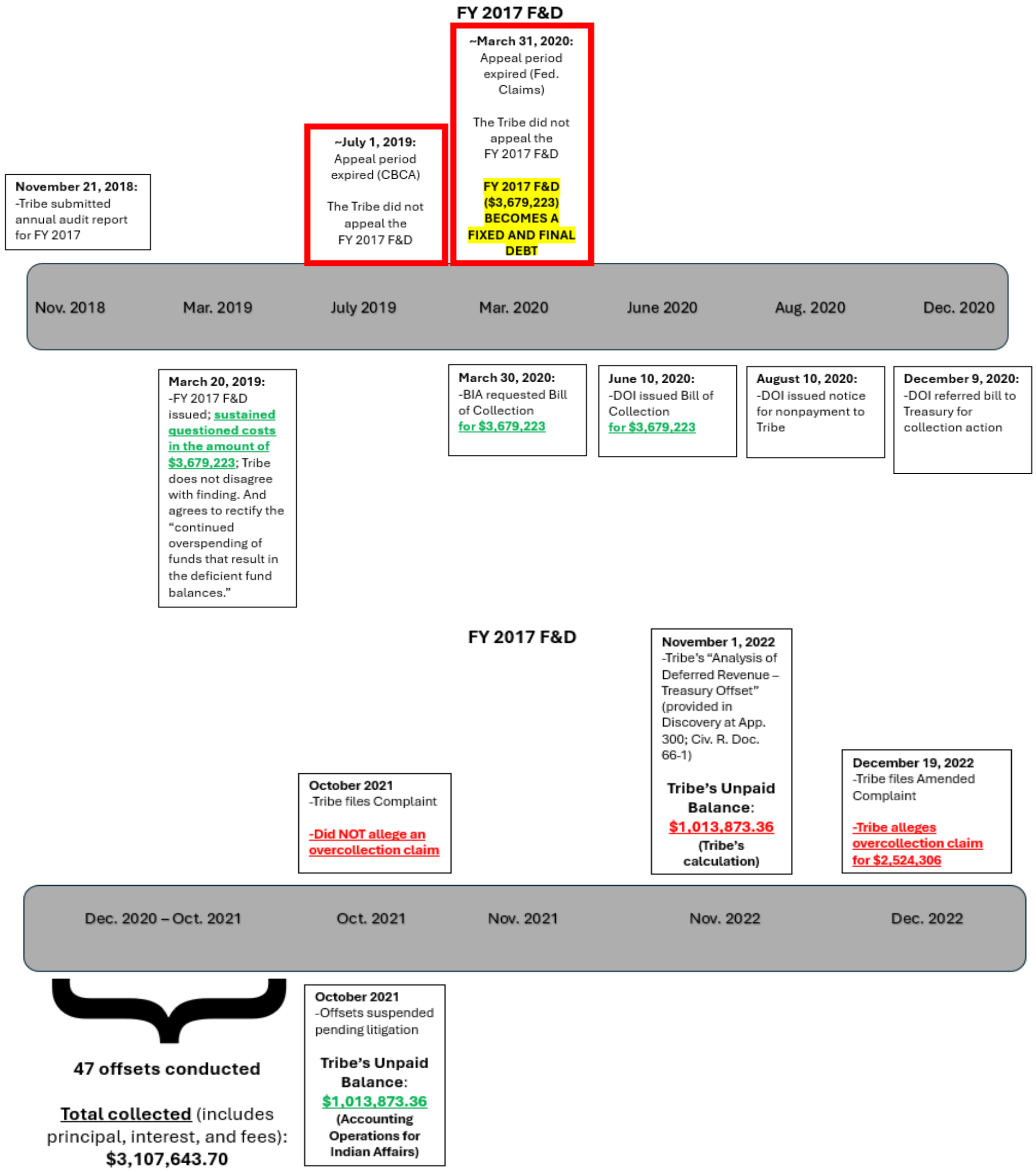

2018 deficit and, if so, what happened to those funds." R. Doc. 32, at ¶ 49. As indicated above, funds collected by the Department of Treasury attributable to the FY 2018 Report ($671,794.92) were recalled/cancelled because it was found that it was duplicative of FY 2017. App. 155 at ¶ 42, R. Doc. 62, at ¶ 42, Gov. Excel spreadsheet, tab 4. The collections instituted on the FY 2018 Report were refunded to the Tribe and then applied to the FY 2017 debt. *Id.* As such, the FY 2017 Report is the only agency decision that created debt that is in question in this litigation. Information regarding the FY 2020 Audit Report is provided solely to give the Court context for the Tribe's position that these purported "prior period adjustments" altered what was otherwise a fixed and final debt.

C. Procedural Background.

The Tribe filed its original Complaint in October 2021 challenging the Findings and Determinations in its FY 2016-2018 annual audit reports. R. Doc. 1. The government moved to dismiss for lack of subject matter jurisdiction because the Tribe did not exhaust its ISDEAA or TCSA claims through the CDA administrative process. R. Doc. 10, at 2, 15-18. The district court agreed and dismissed all claims as untimely under 25 U.S.C. § 2507(e) because the Tribe did not sue within twelve months of receiving the 2016-2018 Reports. App. 86-114, R. Doc. 27, Add. 1-29. The district court permitted an amendment solely to assert an overcollection claim, which the Tribe raised for the first time at oral argument. App. 114, R. Doc. 27, at 29, Add. 29.

The Tribe filed an Amended Complaint alleging a single overcollection claim relating to the FY 2017 Report. App. 115-131, R. Doc. 32. The government again moved to dismiss, arguing that the Tribe's overcollection theory was an untimely collateral attack on the FY 2017 Report, which had become final years earlier. R. Doc. 37, R. Doc. 38, R. Doc. 39. In support, the government submitted the Declaration of Lynn Stapor, Director of the Accounting Operations Division, Indian Affairs, Department of Interior, who attested that no overcollection occurred and that the Tribe still owed $1,013,873.36, which had been suspended pending litigation. App. 134-36 at ¶¶ 1, 5, 7, R. Doc. 39, at ¶¶ 1, 5, 7.

The district court denied the government's motion to dismiss the Tribe's Amended Complaint, finding the Tribe's allegations were sufficient at the pleadings stage. App. 138-39, R. Doc. 56, at 2-3. The district court noted, however, that "[i]f [the Stapor Declaration] is true, the Tribe's claim appears to be mistaken and perhaps subject to summary judgment." App. 140, R. Doc. 56, at 4. The government answered the Amended Complaint, and after the close of discovery,[29] moved for summary judgment. App. 147-48, R. Doc. 61.

The district court granted the government's summary judgment motion, finding that the Tribe's arguments underlying its overcollection claim—namely, that its "prior period adjustments" reduced the FY 2017 deferred revenue balance, and that the government was required to recalculate the principal balance of the FY 2017 debt when collections commenced—lacked any basis in law or fact. App. 490-510, R. Doc. 86, Add. 30-50.

On July 11, 2025, the Tribe filed the present appeal. R. Doc. 88.

SUMMARY OF THE ARGUMENT

After diverting TCSA funds away from allowable education-related expenses to subsidize unrelated government operations—and then failing to appeal when the BIA properly identified misdirected funds as disallowed costs—the Tribe instituted a lawsuit seeking to revisit its prior fiscal mismanagement. The district court

[29] The Tribe took one deposition, of Krissanne Stevens, who was the BIA awarding official.

properly dismissed all claims asserted in the Tribe's original Complaint for lack of subject matter jurisdiction, concluding that "[b]ecause the Tribe did not bring suit within twelve months of receiving the 2016 Report, 2017 Report, and 2018 Report, the Tribe may not bring a claim under 25 U.S.C. § 2507(e) to challenge the decisions in those reports." App. 103, R. Doc. 27, at 18, Add. 18. Although the court dismissed those untimely challenges, it permitted the Tribe to amend its complaint to allege an overcollection theory—a theory raised for the first time at oral argument on the government's motion to dismiss. App. 114, R. Doc. 27, at 29, Add. 29.

On that single remaining claim, the district court again ruled properly at summary judgment. The court held that the Tribe's overcollection theory was "a veiled way" of contesting the un-appealed FY 2017 debt determination. App. 505, R. Doc. 85, at 16, Add. 45. The court also rejected the Tribe's position that it could retroactively alter that final debt through rolling "prior period adjustments," finding no support for such a theory in the records, in governing statutes, or in any accounting principles applicable here. *Id.* The CDA does not authorize post-hoc reopening of a final, un-appealed debt determination, and nothing in the Tribe's evidence created a genuine dispute of material fact to suggest otherwise. *Id.*

The judgments of the district court should be affirmed in full.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THE TRIBE'S ORIGINAL COMPLAINT (1) CHALLENGING THE BIA'S FINDINGS AND DETERMINATIONS DISALLOWING COSTS, AND (2) ALLEGING A FAILURE TO PROVIDE TECHNICAL ASSISTANCE FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE TRIBE FAILED TO EXHAUST THE MANDATORY ADMINISTRATIVE REMEDIES UNDER THE CDA.

A. Standard of Review.

"The existence of subject-matter jurisdiction is a question of law that this court reviews de novo." *ABF Freight Sys., Inc. v. Int'l Bhd. of Teamsters*, 645 F.3d 954, 958 (8th Cir. 2011). When deciding a motion under Rule 12(b)(1), a court must distinguish between a facial attack and factual attack on jurisdiction. *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). When a defendant makes a facial attack challenging whether the facts alleged in the complaint establish subject matter jurisdiction, the plaintiff is afforded similar safeguards as in a Rule 12(b)(6) motion. *Id.* In other words, the court must "accept as true all factual allegations in the complaint, giving no effect to conclusory allegations of law," and determine whether the plaintiff's alleged facts "affirmatively and plausibly suggest" that jurisdiction exists. *Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 521 (8th Cir. 2007). The court's review is then limited to the face of the pleadings. *Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 914 (8th Cir. 2015).

Alternatively, when a defendant attacks the factual basis for subject matter jurisdiction, a court can consider matters outside the pleadings, "and the non-moving party does not have the benefit of 12(b)(6) safeguards." *Osborn*, 918 F.2d at 729 n.6. "A factual attack occurs 'when the defendant challenges the veracity of the facts underpinning subject matter jurisdiction.'" *Davis v. Anthony, Inc.*, 886 F.3d 674, 679 (8th Cir. 2018) (quoting *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009)). In such a case, "no presumptive truthfulness attaches to the plaintiff's allegations," and a "court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Osborn*, 918 F.2d at 730 (citation omitted).

Here, the district court stated that it was following the Rule 12(b)(6) standard used for a facial attack. App. 99-100, R. Doc. 27, at 14-15, Add. 14-15. Thus, this Court too will examine the Rule 12(b)(1) motion as a facial attack on jurisdiction, affording the Tribe's original Complaint Rule 12(b)(6) protections. *See BP Chemicals Ltd. v. Jiangsu Sopo Corp.*, 285 F.3d 677, 680 (8th Cir. 2002) ("The method in which the district court resolves a 12(b)(1) motion—that is, whether the district court treats the motion as a facial attack or a factual attack—obliges [this Court] to follow the same approach").

B. The Court Should Affirm Dismissal of the Tribe's Original Claim Challenging the BIA's Disallowance of Costs Because the Tribe Failed to Exhaust Its Mandatory Administrative Remedies and Thus the United States Did Not Waive Sovereign Immunity.

"The United States, as sovereign, is immune from suit save as it consents to be sued and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *Hercules Inc. v. United States*, 516 U.S. 417, 422 (1996). A waiver of sovereign immunity "cannot be implied but must be unequivocally expressed" in the text of the statute on which the claimed waiver is based. *United States v. King*, 395 U.S. 1, 4 (1969). Waivers of immunity must be construed strictly in favor of the sovereign and not enlarged beyond what the statutory language requires. *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685-86 (1983).

Section 5331 of the ISDEAA provides a waiver of immunity for any cause of action or claim arising under the CDA. *See* 25 U.S.C. § 5331(a). Section 5331 expressly provides that the CDA applies to self-determination contracts, including all claims concerning self-determination contracts and TCSA grant funding where a party seeks monetary damages. *See id*. §§ 5331(d), 2507; *see also Pueblo of Zuni v. U.S.*, 467 F. Supp. 2d 1099, 1109 (D.N.M. 2006). "[T]he CDA is a statute waiving sovereign immunity." *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1329 (Fed. Cir. 2010). It, therefore, "must be strictly construed in favor of the sovereign" and courts accordingly "enforce[] the strict limits of the CDA as jurisdictional prerequisites to any appeal." *Id*.

Here, the respective Findings and Determinations issued for FYs 2017 and 2018 were labeled final decisions by a BIA awarding official, triggering the Tribe's right to appeal. 41 U.S.C. § 7104. Each Findings and Determinations identified the awarding official's determination of questioned costs, was accompanied by a letter advising the Tribe of its appeal rights and was acknowledged by the Tribe—yet the Tribe timely appealed neither. As a result, the determinations became final and binding, and the Tribe's failure to timely appeal deprived the district court of subject matter jurisdiction to review or disturb those final Findings and Determinations. 41 U.S.C. § 7103(g) (stating "the contracting officer's decision on the claim is final and conclusive and is not subject to review by a forum, tribunal, or Federal Government agency").

Other Courts have determined that "exhaustion under the CDA is a jurisdictional requirement." *Pueblo of Zuni v. United States*, 467 F. Supp. 2d 1099, 1107 (D.N.M. 2006); *see also Bowman Constr. Co. v. United States*, 154 Fed. Cl. 127 (Fed. Cl. 2021) (finding Plaintiff's appeal time-barred when outside one-year timeframe outlined in the CDA); *Balbach v. United States*, 119 Fed. Cl. 681 (Fed. Cl. 2015) (dismissing claim brought outside the CDA's one year statute of limitations). Similarly, the Tribe failed to satisfy a fundamental prerequisite under the CDA, thus constituting a jurisdictional bar to suit.

C. The Tribe's Arguments on Appeal Fail and Do Not Overcome the Jurisdictional Bar from Its Failure to Appeal.

The Tribe contends on appeal that its claims are neither time-barred nor meritless, asserting that (1) the cover letters to the Findings and Determinations failed to properly advise the Tribe of its appeal rights; (2) the FY 2017 decision disallowing costs did not notify the Tribe of the sanctions imposed or the intent to issue a bill of collection; (3) the Tribe did not receive notice of an internal BIA memorandum; and (4) BIA failed to provide technical assistance. AB 14-17. Each of these arguments fails. None can overcome the jurisdictional bar created by the Tribe's ultimate failure to timely appeal the Findings and Determinations.

1. The cover letters to the Findings and Determinations properly advised the Tribe of its appeal rights. And the Tribe may not raise alleged defects for the first time on appeal.

The Tribe contends that the cover letters accompanying the Findings and Determinations reports failed to advise it of the right to appeal to a federal district court within twelve months of receipt. AB 14. This argument, raised for the first time on appeal, was not presented below and therefore cannot be considered.

Ordinarily, courts "will not consider an argument raised for the first time on appeal." *United States v. Hirani*, 824 F.3d 741, 751 (8th Cir. 2016) (citing *Harman v. Workman*, 476 F.3d 633, 635 (8th Cir. 2007)). That rule applies with full force here. The Tribe never argued before the district court that the cover letters were defective, nor did the Tribe challenge their content, sufficiency, or legal adequacy in opposing the government's two motions to dismiss, or its motion for summary judgment. Having failed to raise the issue below, the Tribe may not do so now.

The limited exceptions to this rule do not apply. Under this Court's precedent, a newly raised argument may be considered only where it presents a purely legal issue requiring no additional factual development, or where failure to consider the argument would result in manifest injustice. *Hirani*, 824 F.3d at 751 (quoting *Peter Kiewit Sons', Inc. v. Wall St. Equity Grp., Inc.*, 809 F.3d 1018, 1022 (8th Cir. 2016)). The Tribe satisfies neither condition.

First, the alleged defectiveness of the cover letters is not a purely legal issue. Whether the cover letters were adequate necessarily turns on fact-bound questions, including the content of the letters, the context in which they were sent, the information available to the Tribe at the time, and how a reasonable recipient would have understood them. Because the Tribe never raised this argument below, the district court had no opportunity to develop the factual record or make findings relevant to these issues specific to the Tribe's arguments.[30] This Court should not

[30] Anticipating this argument by the Tribe, the district court, in its Opinion and Order on the government's first motion to dismiss, held that the Tribe had proper notice: "The Tribe received notice of their dispute rights in the cover letter to each report; although the cover letters did not reference the Tribe's right to appeal in federal

consider, in the first instance, a fact-dependent theory unsupported by a developed record.

Second, the Tribe cannot show manifest injustice. The Tribe had a full and fair opportunity to raise any challenge to the cover letters in the district court and chose not to do so. The failure to preserve an argument does not create manifest injustice; rather, it reflects the ordinary consequence of forfeiture. *See Hirani*, 824 F.3d at 751.

Nor is this a case where the new argument is "encompassed in a more general argument previously raised." *Id.* The Tribe's arguments below did not generally challenge the sufficiency of notice or the adequacy of appeal procedures. Instead, the Tribe advances on appeal a distinct, narrower theory—focused specifically on alleged defects in the cover letters—that rests on different legal standards and factual predicates. Because the argument was not fairly presented to the district court, it falls outside the narrow circumstances in which this Court has exercised discretion to consider new issues on appeal.

Accordingly, the Court should decline to consider the Tribe's newly raised argument regarding the alleged defectiveness of the cover letters. The argument is procedurally barred because it was never raised below, and it is substantively

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district court, they gave notice of the statutes governing the Tribe's appeal rights." App. 103, R. Doc. 27, at 18, Add. 18.

meritless because the Tribe received sufficient notice of its appeal rights—even an insufficiently detailed cover letter, had that been the case here, cannot retroactively reopen final Findings and Determinations or overcome the jurisdictional bar created by the Tribe's failure to timely appeal.

2. The alleged notification error did not toll the FY 2017 appeal period or give rise to a separate claim.

In its Appellant Brief, the Tribe briefly asserts that a purported notification defect in the FY 2017 Findings and Determinations rendered its appeal rights deficient. AB 15. This argument, raised in a single, conclusory paragraph of the opening brief, is both undeveloped and unsupported by governing law. As presented, the contention lacks the clarity and substance necessary for appellate review and fails to identify how any alleged notification error affected the Tribe's appeal obligations, tolled applicable deadlines, or otherwise gave rise to a cognizable claim.

The Tribe's argument fails at the threshold because it was never properly pleaded or preserved. Although paragraph 61 of the Amended Complaint alleges that the Tribe lacked notice that BIA would issue a bill of collection, the Tribe pursued only a single, expressly "narrow" claim—overcollection of funds—in its Amended Complaint (not in the original Complaint). The Tribe's newly advanced theory premised on allegedly defective notice or delayed billing is not properly before this Court because the Tribe never asserted a standalone claim on that basis in the district court. The Tribe did not plead such a claim, develop it in motion practice, or ask the district court to adjudicate it. As a result, the argument has been waived or, at minimum, forfeited and should not be considered for the first time on appeal.

To the extent the Tribe made a strategic decision to pursue other theories while omitting any defective notice or delayed billing claim, that omission constitutes waiver. At a minimum, the Tribe forfeited the argument by failing to raise it below, depriving the district court of any opportunity to develop the factual record or apply the relevant legal standards.

None of the limited exceptions for considering new arguments on appeal applies. A standalone defective notice or delayed billing theory is not a purely legal issue; it would require fact-intensive inquiries into the content, timing, and context of the alleged notice and billing practices—issues never litigated below. Nor would declining to consider the argument result in manifest injustice, where the Tribe had a full and fair opportunity to raise the claim and chose not to do so.

Finally, the Tribe cannot recast this new theory as merely a refinement of arguments previously presented. A standalone claim based on defective notice or delayed billing is a distinct legal theory, governed by different standards and dependent on different facts than the claims actually before the district court. Because the argument was not preserved, the Court should decline to consider it.

Additionally, the Tribe's passing reference in its opposition to summary judgment to having expected a "payment restriction letter" likewise does not salvage the claim, as the Tribe never identified that alleged expectation as a material fact capable of precluding summary judgment. Nor does the Tribe explain how the alleged notification error tolled the appeal period for the underlying Findings and Determinations or created a separate cause of action. The district court rejected a closely related detrimental-reliance theory for failure to state a claim, App. 107, R. Doc. 27, at 22, Add. 22, and the Tribe offers no basis to revisit that ruling.

In any event, the premise of the argument is flawed: BIA followed its internal procedures when it requested the Interior Business Center to issue a bill of collection after determining that the Tribe's audit reflected disallowed costs. *See* 2016 Handbook at 3 (directing issuance of a formal F&D with appeal rights and a contemporaneous request to IBC for billing). The Tribe's attempt to recast this routine administrative process into a jurisdiction-saving error is unavailing.

3. The time to file an action under the ISDEAA and CDA does not depend on the government disclosing an internal agency memo.

The Tribe also argues that it was harmed by not being notified of Michael Chatmon's November 9, 2017, internal BIA memorandum (the "Chatmon Memo"), claiming this led to continued deferred revenue deficits. AB 17. But as the district court correctly explained, "[t]he time to file an action under ISDEAA and CDA does not turn on when the United States discloses an internal memo, but on the government's final decision." App. 102, R. Doc. 27, at 17, Add. 17.

The Chatmon Memo explicitly directed that the Tribe's capital assets could not be used as collateral for any unearned revenue deficit:

> [Indian Affairs] advanced funds (deferred revenue) must be maintained in cash and/or short-term investments and must be readily available for program expenses. [Indian Affairs] advanced funds (deferred revenue) cannot be covered by a capital asset that must be sold in order to generate cash needed to sustain an [Indian Affairs] program.

App. 11 at ¶ 35, R. Doc. 1, at ¶ 35. In short, the Chatmon Memo ended the Tribe's prior practice of using capital assets to secure its debt.

Consistent with this directive, the BIA issued Findings and Determinations for 2016, 2017, and 2018, following all required procedures to notify the Tribe of questioned costs and appeal rights. The Tribe failed to appeal, and those determinations became final and fully collectible. Because the Tribe did not challenge these un-appealed, final decision, the district court correctly concluded that it lacked subject matter jurisdiction over the Tribe's claims.

4. The Tribe's technical assistance argument is meritless and provides no basis for reversal of the district court.

Finally, the Tribe appears to argue that the district court erred in dismissing its "remaining claims" after determining that the Tribe suffered no injury from the BIA's alleged failure to provide technical assistance under 25 U.S.C. § 2505(c)(3). AB 17. That contention is meritless and provides no basis for reversal.

25 U.S.C. § 2505(c)(3) provides that "[t]he Secretary shall provide technical assistance to enable the school and governing body to carry out such remedial actions." 25 U.S.C. § 2505(c)(3). More broadly, under 25 U.S.C. §§ 5322(d) and (e),[31] the Secretary of the Interior must—subject to the availability of appropriations—provide technical assistance during the contract formation process, including to develop new ISDEAA contracts, to facilitate the assumption of government-administrated programs, and to modify contract proposals that were

[31] 25 U.S.C. § 5322(d)-(e) provide:

> (d) Technical Assistance: The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization—
>
> > (1) to develop any new self-determination contract authorized pursuant to this chapter;
> >
> > (2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 5321(a)(1) of this title; or
> >
> > (3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 5321 of this title.
>
> (e) Grants for Technical Assistance and for Planning, etc., Federal Programs For Tribe: The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for—
>
> > (1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and
> >
> > (2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.

previously declined. *See* 25 U.S.C. § 5322 (d)-(e); 25 C.F.R. § 900.7 (initial contract proposals); 25 C.F.R. §§ 900.28 and 900.30 (technical assistance to avoid declination of a contract proposal); 25 C.F.R. § 900.248 (reassumption stage); *see also Northern Arapaho v. LaCounte*, 2017 WL 2728408 (D. Mont., June 23, 2017) (applying 25 C.F.R. § 900.30 in the pre-award context).

Congress has not, however, imposed any requirement that the Secretary provide technical assistance after a contract or grant has been awarded, including in post-contract award disputes involving ISDEAA contractors or TSCA grantees. *See generally* 25 U.S.C. § 5331; 25 U.S.C. § 2501 *et seq.* Consistent with the statutory framework, the Department's negotiated Post-Award Contract Disputes regulations contain no "technical assistance" obligation. *See* 25 C.F.R. §§ 900.215-230; 61 Fed. Reg. 32482 (June 24, 1996) ("As required by section 107(d) of the [ISDEAA], the Departments have developed this final rule with active tribal participation, using the guidance of the Negotiated Rulemaking Act.")

Against this backdrop, the Tribe's technical assistance argument fails for multiple, independent reasons. To begin with, the argument is inadequately developed on appeal, depriving the government of a meaningful opportunity to respond. In any event, the district court correctly explained that dismissal was required because the Tribe failed to allege any injury resulting from the alleged lack of technical assistance. App. 106-107, R. Doc. 27, at 21-22, Add. 21-22.

The Tribe's statutory interpretation fares no better. As the statutes and regulation make clear, any mandatory technical assistance obligation applies at the contract formation stage—not during post-award disputes. And even if the Court were to assume both that the Tribe alleged cognizable injury and that the ISDEAA imposed a post-award technical assistance requirement (neither of which is true), the Tribe still failed to timely pursue the exclusive remedial process available under the ISDEAA and the CDA. That failure independently deprives the Court of subject matter jurisdiction.

Ultimately, all of the Tribe's arguments reduce to a single, dispositive defect: the Tribe did not appeal the agency's Findings and Determinations. That omission is fatal, and any other arguments are beside the point—jurisdiction cannot be manufactured or cured by recasting or repackaging claims that were never properly appealed. The Tribe's remaining contentions are therefore unavailing attempts to circumvent the unchallenged agency determinations that foreclose its case.

II. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE GOVERNMENT ON THE TRIBE'S OVERCOLLECTION CLAIM BECAUSE THE TRIBE'S ARGUMENTS LACK ANY SUPPORT IN LAW OR FACT.

A. Standard of Review.

This Court reviews a grant of summary judgment de novo and "may affirm the judgment of the district court on any basis supported by the record." *Johnson v. Securitas Sec. Servs., USA, Inc.*, 769 F.3d 605, 610-11 (8th Cir. 2014). Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the nonmoving party, presents no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (8th Cir. 1986). The initial burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *Id.* at 323. The burden then shifts to the nonmoving party to establish there is a genuine issue to be determined at trial. *Prudential Ins. Co. v. Hinkel*, 121 F.3d 364, 366 (8th Cir. 1997).

The nonmoving party may not rest merely upon the allegations in its pleadings. *Buford v. Tremayne*, 747 F.2d 445, 447 (8th Cir. 1984). Rather, the nonmoving party must substantiate its allegations "with sufficient probative evidence that would permit a finding in [its] favor based on more than mere speculation, conjecture, or fantasy." *Mann v. Yarnell*, 497 F.3d 822, 825 (8th Cir. 2007) (internal quotations omitted). "The basis inquiry is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Quick v. Donaldson Co., Inc.*, 90 F.3d 1372, 1376 (8th Cir. 1996) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)).

B. The Government is Entitled to Judgment as a Matter of Law.

The Tribe's overcollection claim is unfounded. The financial records and applicable law establish that the Tribe owes $1,013,873.36 in principal on its FY

2017 debt.[32] Beyond its conclusory overcollection allegation—which it continues to perpetuate in this appeal—the Tribe does not dispute any material facts, including the deferred revenue deficiency or amounts already collected. It offers no evidence or legal authority to support its contention that the debt could fluctuate based on subsequent years' financial statements or retroactive "prior period adjustments" applied in FY 2020. The district court correctly rejected this claim, and its summary judgment in favor of the government should be affirmed.

1. The Tribe's debt arising from the FY 2017 Report was a final debt on the date of issuance.

As outlined above, cost disallowance disputes under the TCSA are governed by provisions of the ISDEAA, which in turn incorporate the CDA. 25 U.S.C. § 2507(e) (incorporating ISDEAA contract dispute provisions found at 25 U.S.C. § 5331; 25 U.S.C. § 2507(a)(8); *see also* 25 C.F.R. § 44.110(a)(4) and (b) (applying 25 C.F.R. part 900, Subpart N to grants under the TCSA). Under the CDA, agency decisions regarding contracts are "final and conclusive" unless timely appealed. *See* 41 U.S.C. § 7103(g).

Here, it is undisputed that the Tribe did not appeal the FY 2017 Report during the appeals period. App. 151 at ¶ 11, R. Doc. 62, at ¶ 11. The Tribal Comptroller,

[32] Again, the FY 2017 Report is the only agency decision that created debt that is in question in this litigation.

instead, agreed with the finding and committed to "rectifying the continued overspending of funds that result in the deficient fund balances." App. 151-52 at ¶ 14, R. Doc. 62, at ¶ 14. Consequently, the un-appealed FY 2017 Report became a final decision, establishing a debt owed to the United States in the amount of $3,679,223. App. 151-52 at ¶¶ 11-15, R. Doc. 62, at ¶¶ 11-15. Collections were instituted, and according to the Accounting Operations for Indian Affairs records, the current principal balance on the FY 2017 debt is $1,013,873.36:

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St	Reference	Inv. ref.	DocumentNo	Rev. with	Typ	Doc. Date	Pstng Date	Clrng doc.	LC amnt	Arrear	RCd	Text
	DC17-6175	1801914086	1801914086		DR	06/10/2020	06/10/2020		3,679,223.00	456	TOC	CSNG 13814456 Lower-2017-6175
	91348596	1801914086	1405226317		DU	04/01/2021	04/06/2021		421,711.93-	221	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91349591	1801914086	1405091261	1405394248	DU	05/06/2021	05/10/2021	1405394248	1,368,487.74-	48	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350374	1801914086	1404064857		DU	06/03/2021	06/07/2021		57,403.84-	158	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350614	1801914086	1405389324		DU	06/10/2021	06/14/2021		2,294.67-	151	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350774	1405394248	1405394248	1405091261	DU	06/17/2021	06/23/2021	1405394248	1,368,487.74	48	TOC	CSNG 13814456 Lower-2017-6175 TR pull back funds
	91351154	1801914086	1405381246		DU	07/01/2021	07/07/2021		715,332.77-	130	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91351376	1801914086	1405416998		DU	07/08/2021	07/12/2021		33,462.71-	123	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352168	1801914086	1405380345		DU	08/05/2021	08/09/2021		51,541.56-	95	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352406	1801914086	1405528113		DU	08/12/2021	08/24/2021		1,399.87-	88	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352632	1801914086	1405497808		DU	08/19/2021	08/25/2021		7,180.87-	81	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352983	1801914086	1405286636		DU	09/02/2021	09/08/2021		1,257,408.70-	67	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353213	1801914086	1405466509		DU	09/09/2021	09/10/2021		4,901.07-	60	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353449	1801914086	1405570210		DU	09/16/2021	09/20/2021		150.17-	53	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353920	1801914086	1405571940		DU	10/07/2021	10/14/2021		61,693.60-	32	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91354382	1801914086	1405634959		DU	10/21/2021	10/25/2021		23,909.67-	18	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91354734	1801914086	1405530252		DU	11/04/2021	11/05/2021		26,958.21-	4	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
*									1,013,873.36			

Gov. Excel spreadsheet, tab 3.

The Tribe's opportunity to contest the FY 2017 Report's findings was limited to an appeal under the statutory framework of the CDA. Because the Tribe did not appeal, the debt became final and fixed as of the date of the Report's issuance.

2. The Tribe cannot change the debt owed after it became final.

As in the district court, the Tribe's continuing justification for its overcollection claim rests on the purported ability to adjust the FY 2017 debt on a running basis, using "prior period adjustments" based on the deferred revenue balances reported in subsequent years' financial statements. AB 17-18. This rationale is novel and legally untenable.

There are no provisions in the CDA that allow the Tribe to unilaterally change the final decision of the BIA, including the amount of debt owed, when it failed to appeal the FY 2017 Report. *See United States v. Lodge Constr., Inc.*, 2018 WL 11456197 (M. D. Fla. Apr. 11, 2018) (denying motion to stay a collection action by the United States because the contractor could not challenge the merits of a contracting officer's decision in any forum where the contractor did not appeal the decision); *Pueblo of Zuni v. United States*, 467 F. Supp. 2d 1099, 1107 (D.N.M. 2006); *Bowman Constr. Co. v. United States*, 154 Fed. Cl. 127 (Fed. Cl. 2021) (finding Plaintiff's appeal time-barred when outside one-year timeframe outlined in the CDA); *Balbach v. United States*, 119 Fed. Cl. 681 (Fed. Cl. 2015) (dismissing claim brought outside the CDA's one year statute of limitations). Accepting the Tribe's position to the contrary would be legally incorrect, and would wholly frustrate not only the CDA, which required the Tribe to timely appeal these findings, but also the ISDEAA and Single Audit Act.

First, the ISDEAA requires the DOI to issue findings on disallowed costs (with appeal rights) within one year of receiving the Tribe's audit report. *See* 25 U.S.C. § 5305(f); 25 U.S.C. § 5325(f). The Tribe's position, if accepted, would essentially render this provision meaningless because a tribe could unilaterally change a finding by submitting an audit report with different financial figures in the subsequent year(s). There would be no finality, and it would create a never-ending cycle of the DOI having to revisit prior years' findings and disallowed costs.

Further, the Tribe's argument is contrary to the Single Audit Act. For each fiscal year in which a tribal organization receives or expends funds pursuant to an ISDEAA contract or TCSA grant, the tribal organization must submit a single-agency audit report. 25 U.S.C. §§ 2507(a)(1) and 5305(f). The audit must be "conducted by an independent auditor in accordance with generally accepted government auditing standards" and submitted to the appropriate agency. 31 U.S.C. § 7502(c). Pursuant to the Single Audit Act, the tribal organization submits a reporting package, including the auditor's report, to a Federal clearinghouse. 31 U.S.C. § 7502(h). The designated agency is then required to "assess the quality of the audit[] conducted[.]" 31 U.S.C. § 7504(a)(2). The respective secretary must give notice as to disallowance of costs within three hundred and sixty-five (365) days of receipt of the annual single-agency audit report. 25 U.S.C. §§ 2507(a)(8) and 5325(f). The Awarding Official then issues a written decision—labeled a

Findings and Determinations Memorandum—as to "whether the audit findings have been addressed satisfactorily and whether questioned costs have been disallowed (sustained) or reinstated (allowed)." 2016 Handbook p. 1, F. If a questioned cost is "disallowed" then the Awarding Official issues a formal notice letter, attaching a copy of the Findings and Determinations. *Id.* p. 3, 3(b).

Here, using the Tribe's rationale would render the above-outlined audit review process meaningless because it would allow a Tribe to simply adjust, decrease, or fluctuate its deferred revenue balances in the subsequent years' audits and nullify any Findings and Determinations made by the Awarding Official without having to file an appeal under the CDA.

Finally, any argument by the Tribe that the amount of debt from the report should have been fixed at the time collections began, instead of on the date the FY 2017 Report was issued, is equally untenable. The plain statutory language, and purpose, of the ISEDEAA, TCSA, CDA, and Single Audit Act preclude the Tribe's claim.

3. There has not been an overcollection on the FY 2017 debt.

The Tribe does not dispute the amount of questioned costs in the FY 2017 Findings and Determinations, nor does it dispute the number of offsets performed by the Department of Treasury on behalf of the DOI to partially satisfy Bill No.

1801914086. App. 151, 153 at ¶¶ 11, 21, R. Doc. 62 at ¶¶ 11, 21. In discovery, the Tribe provided the following spreadsheet:

Lower Brule Sioux Tribe
Analysis of Deferred Revenue-Treasury Offset
November 1, 2022

Date	Description	Amounts	Principal Amounts
3/20/2019	FY17 Findings & Determinations	$ 3,679,223.00	$ 3,679,223.00
11/8/2019	FY18 Findings & Determinations	$ 3,552,860.00	$ 3,552,860.00
6/15/2021	FY18 F&D Duplicate-Payments Transferred to FY17 F&D	$ (3,552,860.00)	$ (3,552,860.00)
10/19/2021	Total Collected through Treasury Offset	$ (4,504,262.20)	$ (4,033,837.38)
2/28/2022	IHS Offset Refunded	$ 1,400,218.00	$ 1,368,487.74
		$ 575,178.80	$ 1,013,873.36

	Principal Amounts	Interest on Prinicipal Overcollected	Penalty on Principal Overcollected	TOP Fee on Principal Overcollected	Total Overcollected
FY20 Findings & Determinations	$ 1,981,756.00	$ -	$ -	$ -	$ 1,981,756.00
Total Collected through Treasury Offset	$ (4,033,837.38)	$ (6,105.92)	$ (10,037.16)	$ (103.81)	$ (4,050,084.27)
IHS Offset Refunded	$ 1,368,487.74	$ -			$ 1,368,487.74
Amount Overcollected	$ (683,593.64)	$ (6,105.92)	$ (10,037.16)	$ (103.81)	$ (699,840.53)

Amounts Offset in Error-Health Services Funds	$ 1,578,446.00

App. 300, R. Doc. 66-1. Notably, the final principal amount reflected on the Tribe's records ($1,013,873.36) exactly matches—to the penny—the principal debt amount from the records of the Accounting Operations for Indian Affairs ($1,013,873.36):

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St	Reference	Inv. ref.	DocumentNo	Rev. with	Typ	Doc. Date	Pstng Date	Clrng doc.	LC amnt	Arrear	RCd	Text
	DC17-6175	1801914086	1801914086		DR	06/10/2020	06/10/2020		3,679,223.00	456	TOC	CSNG 13814456 Lower-2017-6175
	91348596	1801914086	1405226317		DU	04/01/2021	04/06/2021		421,711.93-	221	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91349591	1801914086	1405091261	1405394248	DU	05/06/2021	05/10/2021	1405394248	1,368,487.74-	48	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350374	1801914086	1404064857		DU	06/03/2021	06/07/2021		57,403.84-	158	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350614	1801914086	1405389324		DU	06/10/2021	06/14/2021		2,294.67-	151	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91350774	1405394248	1405394248	1405091261	DU	06/17/2021	06/23/2021	1405394248	1,368,487.74	48	TOC	CSNG 13814456 Lower-2017-6175 TR pull back funds
	91351154	1801914086	1405381246		DU	07/01/2021	07/07/2021		715,332.77-	130	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91351376	1801914086	1405416998		DU	07/08/2021	07/12/2021		33,462.71-	123	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352168	1801914086	1405380345		DU	08/05/2021	08/09/2021		51,541.56-	95	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352406	1801914086	1405528113		DU	08/12/2021	08/24/2021		1,399.87-	88	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352632	1801914086	1405497808		DU	08/19/2021	08/25/2021		7,180.87-	81	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91352983	1801914086	1405286636		DU	09/02/2021	09/08/2021		1,257,408.70-	67	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353213	1801914086	1405466509		DU	09/09/2021	09/10/2021		4,901.07-	60	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353449	1801914086	1405570210		DU	09/16/2021	09/20/2021		150.17-	53	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91353920	1801914086	1405571940		DU	10/07/2021	10/14/2021		61,693.60-	32	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91354382	1801914086	1405634959		DU	10/21/2021	10/25/2021		23,909.67-	18	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
	91354734	1801914086	1405530252		DU	11/04/2021	11/05/2021		26,958.21-	4	TOC	CSNG 13814456 Lower-2017-6175 partial pymt
*									1,013,873.36			

Gov. Excel spreadsheet, tab 3.

In its Appellant Brief, the Tribe's argument to the contrary is insufficient to establish an overcollection claim. As the district court correctly observed in its summary judgment order, the Tribe's argument is merely "a veiled way of contesting the 2017 F&D's sustainment of questioned costs in the amount of $3,679,223. . . . The Tribe's opportunity to challenge the 2017 F&D has passed, erecting a sovereign immunity bar to contesting the amount now." App. 505, R. Doc. 85, at 16, Add. 45.

Beyond the Tribe's self-serving overcollection allegation and its own creative arithmetic—both of which are untethered to law or record evidence—nothing challenges the financial records of the Accounting Operations for Indian Affairs, which clearly show that the Tribe still owes over one million dollars. The Tribe's calculations in the form of "prior period adjustments" cannot overcome the clear, undisputed accounting: the Tribe remains indebted for $1,013,873.36 in principal on the FY 2017 debt.

CONCLUSION

The Tribe's failure to timely appeal the FY 2017 and 2018 determinations deprived the district court of subject matter jurisdiction, and no amount of recharacterizing of those long-final agency actions can cure that jurisdictional defect. Because the Tribe did not invoke the mandatory administrative or judicial review procedures within the statutory deadlines, its claims are barred as a matter of law.

Likewise, the Tribe's overcollection theory collapses under scrutiny: it concedes the underlying debt, presents no evidence that the FY 2017 obligation changed, and rests entirely on retroactive "prior period adjustments" that cannot revive a final, un-appealed debt.

The district court afforded the Tribe repeated opportunities to state a cognizable claim, yet none emerged. Having reached the core of the case with nothing to support jurisdiction or liability, dismissal was not only proper but required. The judgment of the district court should be affirmed in its entirety.

Dated this 21st day of January, 2026.

RONALD A. PARSONS, JR.
UNITED STATES ATTORNEY

/s/ Alexis A. Warner
Assistant U.S. Attorney
325 S. 1st Ave., Suite 300
Sioux Falls, SD 57104
(605) 357-2320
Email: Alexis.Warner@usdoj.gov

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Eighth Circuit Rule 10.6.3, this brief was prepared using Microsoft Word for Microsoft Office 365. I have provided the brief to the Court via electronic filing of a PDF version that has been scanned for viruses using virus scanning software approved by the United States Attorney's Office and is virus free. Pursuant to Fed. R. App. P. 32(a)(7)(C), the brief is proportionately spaced, has a typeface of Times New Roman 14 points, and contains 9,903 words.

/s/ Alexis A. Warner
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Alexis A. Warner
Assistant U.S. Attorney