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

FORT BELKNAP INDIAN COMMUNITY, Plaintiff, vs. UNITED STATES OF AMERICA, et al., Defendants.	CV 22-103-GF-JTJ THIRD DECLARATION OF KEVIN MARTIN

I, Kevin Martin, in accordance with the requirements of 28 U.S.C. § 1746, further declare as follows:

Introduction

1. I am the Deputy Associate Director of Support Services for the Office of Justice Services ("OJS"), Bureau of Indian Affairs ("BIA"), U.S. Department of

the Interior. In my position, I have primary responsibility for budget and financial matters of OJS. I have held this position since 2011. I previously held three positions within the BIA budget office, all with responsibility for budget and financial matters of BIA. I hold a bachelor's degree in accounting from Radford University, Radford, Virginia.

2. This declaration is prepared in response to the Court's request for additional information regarding the use of acreage in OJS funding calculations for the Fort Belknap Indian Community ("FBIC") law enforcement program.

OJS Analysis

3. For purposes of this litigation, OJS reviewed FBIC acreage with the BIA Fort Belknap Agency and the BIA Office of Trust Services in February 2025. Based on that review, OJS established that the on-reservation trust acreage at Fort Belknap Indian Reservation to be 675,796.84 acres. Separately, the BIA Office of Trust Services provided OJS with a global update of comparable acreage figures for all tribes for the purpose of estimating law enforcement service areas across Indian country. The FBIC figure reflected in that global update was 662,326 acres.

4. The size of a tribe's law enforcement service area accounts for 20 percent of the OJS funding formula, which is applied to base increases and one-time funding. If OJS did not use its funding formula to calculate a base increase in any given year, then there would have been no effect of acreage on FBIC's base

funding level. Each one-time funding calculation is independent of every other one-time funding calculation, and so any effects to one-time funding calculations stand alone and do not carry over into subsequent years.

5. I surveyed OJS funding increase calculations for FBIC going back to 2014 and have compiled counterfactual funding levels using updated numbers for all tribes, including 675,797 for FBIC. For base increases, I carried forward any difference into the following year, thus capturing any compounding that would have taken place by the funding formula. I also added additional fixed-cost increases that would have applied to the updated base amounts. **Exhibit 1** shows the results of this analysis.

6. The only base increases to FBIC that used the 427,000 figure were the Fiscal Year ("FY") 2022 and FY 2023 base increases. This reflects several factors. For several years, Congress enacted no general increase and, in recent years, no fixed cost increase. For FY 2014 and FY 2017, OJS used pro rata distributions to counteract the effect of the sequester, which hit tribes on a pro rata basis. For FY 2019, at the direction of Congress, OJS directed the base increase to tribes experiencing very high levels of drug crime, for which FBIC did not qualify. Finally, OJS used the comparable figure of 662,326 for the FY 2026 base increase, which was based on the global update provided to OJS from the BIA Office of Trust Services. As a result, correct acreage figures may be determined by

calculating the additional increase that would have been provided in FY 2022 and FY 2023 and applying each increase the year of that increase and future years.

7. Using the correct acreage, FBIC base amounts would have been as follows: 1,358,407 for FY 2022, a difference of $5,160 from the awarded amount; 1,399,544 for FY 2023, FY 2024, and FY 2025,[1] a difference of $8,411 from the awarded amount in each of those years; $1,456,940 for FY 2026,[2] a difference of $8,411 from the awarded amount. These differences total $38,804, not including interest.

8. In response to the draft analysis provided by Natalya Abdrailova, discussed in full below, I added a calculation of contract support costs that would have been paid by BIA on the additional base amounts calculated above. As explained further below,[3] BIA does not pay contract support costs on one-time

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[1] For FY 2024 and FY 2025, Congress did not appropriate even fixed cost increases, and so all tribes had flat funding levels for these years.

[2] I additionally considered whether the amount calculated for FY 2026 would have been different using the revised level of funding for FY 2025. I found that using the higher FBIC base funding level for FY 2025 reduced the FBIC calculated base increase for FY 2026 by two dollars. This is because the prior year base is used in two parts of the OJS funding formula: unfunded need (weighted 35 percent) and pro rata (weighted 10 percent). The higher base funding amount resulted in a decrease to the unfunded need factor that more than offset the increase to the pro rata factor. I omitted the negative two dollar difference for simplicity and as a conservative assumption in favor of the tribe.

[3] *See infra* paragraph 21.

funding, and so my calculations are based only on the additional base amounts that would have been provided to FBIC.

9. According to BIA policy,[4] FBIC would have been eligible to collect direct contract support costs at a rate of 18 percent of tribal budgeted salary cost, plus indirect contract support costs at the tribe's negotiated indirect cost rate multiplied by the Secretarial amount awarded to the tribe.[5] As a simplifying assumption in favor of the tribe, I assume budgeted salary cost to be 100 percent of the base amount awarded to the tribe. The following table reflects the calculation.

[4] Indian Affairs Manual, Part 13, Chapter 7, Page 5, https://www.bia.gov/sites/default/files/dup/assets/public/raca/manual/pdf/13_IAM_7_Contract_Support_Costs_508_OIMT.pdf.

[5] Mathematically, an increase in the FBIC base funding level for law enforcement would have increased the direct cost base used to calculate the tribe's indirect cost rates, which likely would have marginally decreased the indirect cost rates calculated by the Interior Business Center. As a simplifying assumption in favor of the tribe, I omitted any effect of the increased base levels on the tribe's indirect cost rates.

10.

Fiscal Year	Base Difference	Direct Contract Support Difference	Indirect Cost Rate	Indirect Contract Support Difference	Total Contract Support Difference
2022	$5,160	$929	20.37%	$1,051	$6,211
2023	$8,411	$1,514	26.29%	$2,211	$10,622
2024	$8,411	$1,514	26.78%	$2,252	$10,663
2025	$8,411	$1,514	26.40%	$2,221	$10,632
2026	$8,411	$1,514	25.02%	$2,104	$10,515

11. The Secretarial amount for future years would be calculated using the FY 2026 base funding level of $1,456,940 as the starting point, with applicable increases applied on top of that amount, as for all tribes.

12. For one-time increases, OJS used the 427,000 figure each year from FY 2018 to FY 2023. Each one-time increase distribution is independent of every other distribution, and so there was no need to account for compounding. However, I did use updated base amounts for FY 2022 and FY 2023 in the one-time funding calculations for FY 2022 and FY 2023, reflecting fully what would have been those allocations under the acreage figure of 675,797. For FY 2024, OJS used the global update figure of 662,326 to calculate one-time funding for FBIC for that year, and so no difference is calculated. The total difference in one-time funding that OJS would have awarded using the correct acreage figure is $42,177, not including interest.

13. **Exhibit 2** contains an interest calculation using Prompt Payment Act rates applied monthly.[6] The result is the total amount owed, including interest, from all underpayments resulting from the use of incorrect acreage figures by OJS for the FBIC law enforcement program, and is $151,199 as of September 2026.

FBIC Expert Analysis

14. I have reviewed the draft analysis prepared by FBIC retained expert Natalya Abdrasilova in response to this question. In response to the Abdrasilova analysis, I have amended my own analysis to include contract support costs that would have been paid by BIA on the additional base amounts, as reflected in paragraph 8 above. The remaining differences between my numbers and the numbers calculated by Ms. Abdrasilova are the result of several differences in our assumptions and methodologies, which I describe in the following paragraphs.

15. First, I calculated my differences using the actual spreadsheets that OJS used for the distributions in question, which were produced in discovery to

[6] Differences in one-time payments are assigned to the month in which those payments were made. Differences in base increase payments are applied to the month in which those increases were distributed. Differences in prior year base amounts are applied to the first continuing resolution reflecting the prior year amount for simplicity and as a conservative assumption in favor of the tribe. Differences in contract support cost payments are applied to the first base payment of that year for simplicity and as a conservative assumption in favor of the tribe.

Plaintiff.[7] By contrast, Ms. Abdrasilova applied the same percentage adjustment to each distributed increase, regardless of how—or whether—OJS used acreage in calculating that increase.

16. As I have described throughout this litigation, and as I explained in detail in my trial testimony, there are several types of funding increases that OJS calculates and distributes to tribes.[8] These include, most notably here, fixed-cost increases. As I explained in my trial testimony, fixed-cost increases are distributed pro rata, and the final Secretarial amount for any year may include both a fixed-cost increase and a formula-derived general increase, depending on what Congress appropriates.[9]

17. The increases identified by Ms. Abdrasilova that do not correspond to a formula-based spreadsheet are years in which Congress appropriated only a

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[7] *See* Exhibit 1 (providing record citations for each spreadsheet at issue); *see also* Trial Exhibits 002, 505, 539, 541, 543, 544, 545, 546.
[8] Martin, Trial Tr., Vol. 1, 92:3–93:19, 101:6–19; Trial Exhibit 47, Resp. to Interrog. No. 1, at 3; Trial Exhibit 510, CI&P Appropriated Increases (2014–2023) (produced as USA_0270 and originally filed as 68-1, Statement of Undisputed Facts, Exhibit 3); Trial Exhibit 524, First Declaration of Kevin Martin, ¶¶ 24, 30, 31; Trial Exhibit 525, Second Declaration of Kevin Martin, ¶¶ 24, 45 n.18; Trial Exhibit 526, U.S.' Supplemental Expert Disclosure – Kevin Martin, ¶ 32; *see also* Doc. 71-15, Deposition Transcript of Kevin Martin, 20:3–21:16.
[9] Martin, Trial Tr., Vol. 1, 92:21–93:3, 96:20–97:1; *see also* Doc. 71-15, Deposition Transcript of Kevin Martin, 29:6–10.

fixed-cost increase, which OJS distributed pro rata, and not a general unrestricted increase, which OJS would have distributed by the formula. OJS has never used acreage to calculate fixed-cost distributions, and FBIC would have received the same amount regardless of acreage. Nevertheless, Ms. Abdrasilova applied her adjustment factor to these distributions. As a result, her calculations significantly overestimate what FBIC would have received using correct acreage.

18. Additionally, Ms. Abdrasilova failed to account for base increases that reflect unusual Congressional activity or directives. As stated above, *supra* paragraph 6, and as reflected in spreadsheets and tables produced in discovery,[10] OJS distributed base increases for FY 2014 and FY 2017 pro rata to undo the effect of the sequester, which was applied as directed by Congress to all OJS accounts in FY 2013. Similarly, in FY 2019, OJS applied a different methodology to distribute base funding increases because Congress directed that the funding be used for opioid response.[11] For each of these base distributions, FBIC would have received

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[10] *See* Trial Exhibit 510, CI&P Appropriated Increases (2014–2023) (produced as USA_0270 and originally filed as 68-1, Statement of Undisputed Facts, Exhibit 3); Trial Exhibit 539, 2014 Law Enforcement Base and One-Time (Round 1) Increase Calculations (produced as USA_0176); Trial Exhibit 541, 2017 Law Enforcement Base Increase Calculations (produced as USA_0179).

[11] *See* Trial Exhibit 510, CI&P Appropriated Increases (2014–2023) (produced as USA_0270 and originally filed as 68-1, Statement of Undisputed Facts, Exhibit 3).

the same amount regardless of its acreage. Because Ms. Abdrasilova applied the adjustment factor to these distributions, her calculations again significantly overestimate what FBIC would have received with correct acreage.

19. Similarly, Ms. Abdrasilova in her initial analysis failed to account for different iterations of the OJS funding formula, particularly for one-time funding distributions for FY 2018, FY 2019, and FY 2020, which used a 10 percent weight for acreage instead of the current 20 percent. In her updated analysis, Ms. Abdrasilova acknowledged that not all one-time distributions followed the 20 percent weight that has been the current weight assigned to that factor throughout the course of this litigation. These factors were always reflected accurately in spreadsheets produced in discovery,[12] and interrogatory responses provided by the government early in this litigation spoke only to FY 2023, which was the year originally at issue.[13]

20. Second, I calculated my differences by updating all tribal acreage figures using current accurate data maintained by BIA. By contrast, Ms.

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[12] *See* Trial Exhibit 542, 2018 Law Enforcement One-Time Increase Calculations (produced as USA_0180); Trial Exhibit 543, 2019 Law Enforcement One-Time Increase Calculations (produced as USA_0155); Trial Exhibit 544, 2020 Law Enforcement One-Time Increase Calculations (produced as USA_0157).
[13] *See* Trial Exhibit 47, Resp. to Interrog. No. 17, at 19.

Abdrasilova, even in her limited use of OJS spreadsheets, evidently updated only FBIC's acreage figure. As a result, my calculated numbers are close but not the same as those calculated by Ms. Abdrasilova. For example, for one-time funding distributed in FY 2023, Ms. Abdrasilova calculated an underpayment of $4,022 based on OJS spreadsheets, whereas I calculated an underpayment of $4,385. In all, I calculated a total pre-interest difference in one-time funding for FY 2018 through FY 2023 as $42,177, compared to $42,759 as calculated by Ms. Abdrasilova based on OJS spreadsheets. The difference is therefore small, and either number is a defensible estimate of pre-interest differences in one-time funding attributable to OJS's use of incorrect acreage.

21. Third, Ms. Abdrasilova erred by assuming that BIA would pay contract support costs on one-time funding, which is incorrect. BIA annually pays two types of contract support costs: direct contract support costs and indirect contract support costs.[14] Direct contract support costs are limited to direct program expenses that must be carried on by a tribal contractor that are not reflected in the amount the Secretary would have otherwise provided for operation of the

[14] *See* 25 U.S.C. § 5325(a)(3)(A)(i)–(ii), (5), (6); Indian Affairs Manual, *supra* note 4, Part 13, Chapter 7.

program.[15] Common direct contract support costs include worker's compensation and unemployment insurance payments that are directly attributable to the program but which the federal government does not pay for its employees. By BIA policy, direct contract support costs are calculated as 18 percent of a tribal contractor's budgeted salary cost for the contracted program, which is defined by the base funding amount.[16] Because one-time funding is non-recurring, such funds are restricted to equipment and similar costs and may not be used to cover salary costs. For that reason, OJS does not pay direct contract support costs on one-time funding provided to tribes and would not have done so for the additional one-time funding calculated by this analysis.

22. Indirect contract support costs are administrative or overhead expenses incurred by the tribal contractor that benefit multiple programs. Common indirect contract support costs include financial management, information technology, and human resources costs. Each year, tribal contractors submit proposed indirect costs to the Interior Business Center and negotiate an indirect cost rate, which is calculated as the total indirect costs divided by the total direct

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[15] 25 U.S.C. 5325(a)(2)–(3).

[16] Indian Affairs Manual, *supra* note 4, Part 13, Chapter 7, Page 5. BIA policy uses the term "section 106(a)(1) program[]." ISDEAA section 106(a)(1) is codified at 25 U.S.C. § 5325(a)(1) and defines the Secretarial amount or base funding amount.

cost base, expressed as a percentage.[17] BIA then calculates the indirect contract support costs owed under a specific contract by multiplying the tribal contractor's negotiated indirect cost rate by the Secretarial amount for the contracted program.[18] Because one-time funding is not included in the direct cost base used to calculate the indirect cost rate, applying the indirect cost rate to one-time funding would result in an over-recovery of indirect costs attributable to the contract. For that reason, OJS does not pay indirect contract support costs on one-time funding provided tribes and would not have done so for the additional one-time funding calculated in this analysis.

23. Fourth, Ms. Abdrasilova speculatively calculates additional one-time vehicle funding supposedly attributable to the use of incorrect acreage by OJS. As is evident by the roundness of the distributions—$300,000 and $200,000—no formula was used to identify these funding amounts. Rather, these amounts were awarded by the BIA Rocky Mountain Region, which is organized separately from OJS, as a reallocation from other programs made at the request of FBIC.[19] There was therefore no underpayment on this amount attributable to OJS's use of

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[17] *See* 2 C.F.R. Part 200, Appendix VII.
[18] Indian Affairs Manual, *supra* note 4, Part 13, Chapter 7, Page 5.
[19] Martin, Trial Tr., Vol. 2, 447:1–448:14, 449:6–12, 452:8–18.

incorrect acreage and no underpayment on contract support costs related to this amount.[20]

24. Finally, Ms. Abdrasilova appears to generally accept the interest calculation methodology I provided in my initial analysis. If anything, the rules I use above, see *supra* note 6, to assign payments to specific months would appear to be more favorable to the tribe than those adopted by Ms. Abdrasilova. But the most significant difference in the amount of interest we each calculated comes from differences in the underlying amounts owed—not in the methodology either of us employed to calculate interest.

25. It is for these reasons that I believe that the amount I calculated is the more accurate estimate of the additional funding that FBIC would have received had OJS used the correct acreage in its funding calculations. If anything, the assumptions I made and the methodologies I used were simplified in favor of higher funding levels for the tribe, consistent with accurate assumptions and application of BIA and OJS practice and policy.

[20] For the same reasons given above, contract support costs would not have been paid on this one-time distribution from the BIA Rocky Mountain Region. *See supra* paragraphs 21–22.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this _9th day of October 2026.

KEVIN MARTIN

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Date: 2026.10.09 13:41:49 -04'00'

Kevin Martin
Washington, D.C.