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

TERRYL T. MATT,)
)
 Plaintiff,)
)
 v.) Civil Action No. _____
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

COMPLAINT

COMES NOW Plaintiff, Ms. Terryl T. Matt, by and through her counsel, and respectfully submits this complaint as follows:

Introduction

1. This action is based upon the Federal Tort Claims Act, 28 U.S.C. §1346(b) and §2671, *et. seq.*

2. This case arises on the Fort Belknap Indian Reservation (“Reservation”), south of the Town of Lodgepole, Montana, near the mouth of Whitehorse Canyon. Plaintiff owns a ranch on the Reservation, which has been in her family for generations. The U.S. government, acting by and through the U.S. Department of the Interior (“DOI”), U. S. Bureau of Indian Affairs (“BIA”), and in concert with Fort Belknap tribal officials, built a road across the Plaintiff’s ranch

property without her authorization or permission. The road was constructed without regard for basic engineering or environmental considerations and without regard for laws and regulations that serve to protect the environment. Among other issues, the road was constructed so that it obstructs and diverts a creek away from its natural riparian corridor and across the Plaintiff's ranch. The diverted creek has and continues to cause extensive damage to the Plaintiff's ranch, including the riparian area, by carving a canyon through the land and causing significant and ongoing erosion. Plaintiff seeks money damages to fund restoration to her property and compensate her for damage caused by road building and maintenance activities.

Parties

3. Plaintiff, Terryl T. Matt, is an enrolled member of the Assiniboine Tribe of the Fort Belknap Reservation. Ms. Matt was, and remains, a resident of the State of Montana at all times relevant to the facts alleged in this Complaint.

4. The United States of America is a sovereign government that has consented to be sued for civil liability pursuant to 28 U.S.C. §2871, *et. seq.*

5. The BIA is the agency of the Defendant, the United States of America, under the direct jurisdiction of the DOI, acting on behalf of the Defendant which has a federal trust responsibility toward Tribes and tribal members, including the Plaintiff, Terryl Matt. Federal officials are charged with administering the federal trust responsibility through the BIA, among other agencies.

6. Federal employees who acted on behalf of the Defendant include, but are not limited to:

A. Mr. Ed Parisian, at all times relevant herein before his retirement, was an

employee with the BIA pursuant to 28 U.S.C. §2671, working as the Regional Director for the BIA Rocky Mountain Regional Office in Billings, Montana. At all times material herein, Ed Parisian was acting within the scope of his employment with the U.S. government.

B. Mr. Cliff Hall, at all times relevant herein, was an employee with the BIA pursuant to 28 U.S.C. §2671, working as the BIA Superintendent of the Fort Belknap Agency in Harlem, Montana. At all times material herein, Cliff Hall was acting within the scope of his employment with the U.S. government.

C. Mr. Mike Tolden, at all times relevant herein, was an employee with the BIA pursuant to 28 U.S.C. §2671, working as the BIA Roads Manager on the Fort Belknap Indian Reservation out of the BIA office in Billings, Montana. At all times material herein, Mike Tolden was acting within the scope of his employment with the U.S. government.

D. Plaintiff does not know the true identities of additional federal employees who were acting within the scope of their employment when they performed road building and maintenance activities that damaged her property. These unknown government employees or agents are named in their fictitious names, John Doe 1 and John Doe 2.

Jurisdiction and Venue

7. This United States District Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §1346(b) because Plaintiff is bringing a claim against the United States for money damages for injury to property, and loss of property, caused by negligent or wrongful acts

or omissions of employees of the government while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law.

8. Venue is proper in the U.S. District Court of Montana pursuant to 28 U.S.C. §1402(b) because the Plaintiff resides in the judicial district and the acts and omissions complained of occurred within this judicial district.

9. Pursuant to 28 U.S.C. §2680(a), this claim is not based upon the exercise or performance or failure to exercise or perform a discretionary function or duty on the part of the Defendant or its employees.

10. Procedural prerequisites to filing this action have been properly satisfied, including compliance with 28 U.S.C. §2675(a).

11. Plaintiff filed a Notice of Claim in the proper form based on the facts set forth in this Complaint. The Notice of Claim was filed on May 22, 2014, with the appropriate federal agency, the BIA.

12. The BIA denied Plaintiff's claim on November 21, 2014.

13. The amount in controversy exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand Dollars and no/100 (\$75,000.00). Consistent with the amount presented to the federal agency, the amount of the claim is Five Million Three Hundred Forty-Nine Thousand Seven Hundred Forty-Four and no/100 dollars (\$5,349,744.00) or whatever amount is deemed necessary and appropriate to pay for removal of the unauthorized road, restoration of the ecological damage caused by the road, restoration of agricultural lands damaged by the road, restoration of the diverted water course, the cost of replacement of topsoil and other earthen

materials lost as a result of construction or erosion, and all costs and damages associated with the tortuous conduct in this case, all of which is ongoing.

Facts Common to All Causes of Action

14. Plaintiff owns a ranch on the Fort Belknap Indian Reservation, south of the Town of Lodgepole, Montana, near the mouth of Whitehorse Canyon. Ms. Matt's ranch was, and continues to be, damaged by the Defendant, United States, and is the subject of the Complaint.

15. At all times mentioned in this Complaint, Ms. Matt has a 1/1 interest in Allotment 751-C; a 1/1 interest in Allotment 751-E; a 1/1 interest in Allotment 752-B; and a 1/2 interest in Allotment 752-C. Upon information and belief, the other 1/2 interest in Allotment 752-C is owned by the Bear family and the resident Tribe.

16. Legal descriptions of Ms. Matt's Fort Belknap allotments, are as follows:

- A. 751C (SW1/2 SE1/4, Sec. 20, T.26 N, R. 25 E & NW1/2 NE1/4, Sec. 29, T.26 N, R. 25E.);
- B. 751E (NE1/4 NE1/4, Sec. 29, T.26 N, R. 25 E.);
- C. 752B (N1/2 NE1/4, N1/2 S1/2 NE1/4, Sec. 20, T. 26 N., R. 25 E.); and
- D. 752C (N1/2 SE1/4, S1/2 S1/2 NE1/4, Sec. 20, T. 26 N., R. 25E.).

17. The ranch property was previously owned by Ms. Matt's father and mother, Daniel and Annabel Healy, from 1970 to 2010. Ms. Matt took possession of the ranch in late 2010 after her father passed away.

18. Plaintiff is employed, and regularly resides, in Cut Bank, Montana. Cut Bank is approximately 200 miles from Ms. Matt's ranch property. For this reason, she is often away from her property on the Reservation.

19. Prior to his passing, Daniel Healy may have granted "permission" to community

members to cross the family's ranch for the purpose of gathering firewood in a timbered area beyond the property.

20. On various occasions, the BIA has asserted the right to cross the Plaintiff's land beyond the scope and purpose of any possible limited permission or right-of-way. None of these assertions are clear to the Plaintiff.

21. The Plaintiff is informed, and on the basis of that information alleges, that sometime after her father passed away, Defendant performed maintenance to the road on Plaintiff's property in an attempt to improve the road.

22. The road work was carried out without the Plaintiff's knowledge and without the Plaintiff's authorization or permission.

23. The Plaintiff is informed, and on the basis of that information alleges, that the road is designated by the BIA as Route 113, which is located in or near Sections 17 and 20, Township 26 North, Range 25 East, in Blaine County, Montana, within the Fort Belknap Indian Reservation.

24. Defendant maintained BIA Route 113 in a way that obstructed and diverted a creek flow onto the Plaintiff's property.

25. The road work on BIA Route 113 was performed without regard for basic engineering or environmental considerations that are typically related to road design and construction or the moving of a waterway. The road was constructed without regard for the laws and regulations that serve to protect the environment.

26. The Plaintiff is informed, and on the basis of that information alleges, that the road work on BIA Route 113 was performed to create convenient access for her neighbors,

Theodore Bell and Kathy Wing, to come and go from their home.

27. Kathy Wing obtained 40 acres by a questionable gift deed, which is where she has a home on a parcel of land that is adjacent to Ms. Matt's ranch property.

28. Subsequent to original work and maintenance on BIA Route 113, on or about June, 2011, the Fort Belknap area experienced a high-water event caused by significant rainfall and spring runoff. During that time, the creek on Plaintiff's property had very high water flows.

29. The Plaintiff is informed, and on the basis of that information alleges, that Defendant's road work on BIA Route 113 prior to the high-water event caused the waterway to jump out of its natural channel and to cross Ms. Matt's pasture lands. It is further alleged that the creek cut a canyon through Ms. Matt's pastures and rendered impassable BIA Route 113. This caused significant and ongoing damage to Plaintiff's land, which has negatively affected the overall value of her property.

30. In response to the high-water event of June, 2011, Defendant brought heavy equipment onto Plaintiff's land and bulldozed a new temporary road across her property. This second, temporary, road is located up-slope, and to the south of BIA Route 113, which was impassable due to erosion caused by prior obstruction of the creek. Construction of the temporary road was performed without Ms. Matt's knowledge or authorization. It is further alleged that construction of the temporary road was performed without regard for basic engineering or environmental considerations that are typically related to road design and construction.

31. On or about August, 2011, and again without Plaintiff's permission, Defendant set about rebuilding BIA Route 113 by adding to it large volumes of road base and material fill,

including gravel.

32. On or about September, 2013, and again without Plaintiff's permission, Defendant performed construction and maintenance on BIA Route 113 on Ms. Matt's property.

33. The Plaintiff is informed, and on the basis of that information alleges, that additional construction and maintenance to BIA Route 113 was also performed without regard for basic engineering or environmental considerations that are typically related to road design and construction or the moving of a waterway. In particular, these activities were performed without regard for problems caused by prior obstruction of the creek.

34. As a result of the Defendant's construction and maintenance activities on BIA Route 113, that road now acts as a coffer dam, which traps the creek on the uphill side of the road and prevents the creek from entering its natural riparian corridor. This obstruction causes significant and ongoing damage to Ms. Matt's property, including soil erosion, environmental degradation, and the invasion of noxious weeds.

35. It is alleged that Defendant did not seek or obtain permission from the Plaintiff to enter onto her land, or perform the projects described herein, which included obstructing a water way and building roads, among other activities.

36. Upon information and belief, Plaintiff alleges that employees and agents of the BIA collaborated with officials of the Fort Belknap tribal government in the process of building and maintaining the roads described herein, among other activities that damaged her land.

37. Plaintiff is informed and believes, and on that basis alleges, that BIA Route 113, and the temporary road, were built and maintained on her land in a manner that is negligent, a trespass, and a nuisance to her.

38. The Defendant owes a duty of care to the Plaintiff as a tribal member. BIA employees, Ed Parisian, Cliff Hall, Mike Tolden, John Doe 1 and John Doe 2, negligently breached that duty of care while acting within the scope of their employment with the U.S. government.

39. Ms. Matt is informed and believes, and on that basis alleges, that the Defendant's conduct is the proximate cause of previous and ongoing damage to her land. This damage prevents the Plaintiff from accessing large portions of her ranch or leasing her land for grazing or agricultural purposes.

40. Defendant continues to trespass on Ms. Matt's land to use BIA Route 113 despite repeated requests by her that the U.S. government, and its employees and agents, refrain from entering onto, or altering, her land. The ongoing trespass poses a threat to the good and marketable title to Ms. Matt's land.

41. Ms. Matt is informed and believes, and on that basis alleges, that the serious and continual damage to her land will take a number of years to repair and that damage will render her property unusable for several years to come, resulting in a loss of income from hay fields and grazing leases.

42. Included as Exhibit 1 for the Plaintiff is a map which demonstrates the affected portion of Plaintiff's ranch property and extent of damage as of May, 2014.

**FIRST CLAIM FOR RELIEF
(Negligence)**

43. The Plaintiff hereby realleges each of the allegations set forth in the preceding

paragraphs, and by this reference incorporates each such allegation herein as if set forth in full.

44. At all times relevant to this Complaint, Defendant, its employees, and agents owed a duty to Plaintiff, in light of all relevant circumstances, to exercise reasonable and due care.

45. Defendant, its employees, and agents, breached this duty of reasonable care by directing that, or allowing for, heavy equipment to be brought onto Plaintiff's land for the purposes of performing road work and moving a creek, among other activities. Defendant further breached its duty of reasonable care by allowing persons to enter into Plaintiff's land beyond the scope and purpose of any limited permission that may have been granted to community members.

46. Defendant's breach of the duty of reasonable care was the actual and proximate cause of damage to Ms. Matt's property.

47. As a result of the Defendant's breach of its duty of care, Plaintiff has been harmed.

48. Defendant, its employees, and agents have a duty to protect tribal members and their lands.

49. Defendant breached its duty to protect Plaintiff as a tribal member, and her land, by directing that, or allowing for, heavy equipment to be brought onto the Plaintiff's property for the purposes of performing road work and moving a creek, among other activities. Defendant further breached its duty to protect Plaintiff as a tribal member, and her land, by allowing persons to enter into Plaintiff's land beyond the scope and purpose of any limited permission that

may have been granted to community members.

50. As a result of the Defendant's breach of its duty to protect tribal members and their lands, Ms. Matt has been harmed.

51. As a direct and proximate result of the acts and omissions of Defendant, its employees, and agents acting within the scope of their employment, Plaintiff's land has been, and continues to be, damaged.

52. Damages for unauthorized use of the Plaintiff's property will be proven at trial.

SECOND CLAIM FOR RELIEF
(Trespass)

53. Plaintiff hereby realleges each of the allegations set forth in the preceding paragraphs, and by this reference incorporates each such allegation herein as if set forth in full.

54. The Defendant, its employees, and agents, have entered onto Plaintiff's land, which has a title held in trust by the United States government, without Plaintiff's consent or authorization.

55. The actions of the Defendant, its agents, and employees, has caused a road to be built and a creek bed to change course, among other activities, all which constitutes a trespass that continues to cause significant and ongoing damage to Plaintiff's land.

56. The Defendant, its employees, and agents, entered into the Plaintiff's land beyond the scope and purpose of any limited permission that may have been granted to community members.

57. The Defendant, its employees, and agents, knowingly and willfully continue to

trespass on Plaintiff's land despite repeated requests from Ms. Matt for the Defendant, its employees, and agents to stop the trespass.

58. Damages for the trespass will be proven at trial.

**THIRD CLAIM FOR RELIEF
(Nuisance)**

59. Plaintiff hereby realleges each of the allegations set forth in the preceding paragraphs, and by this reference incorporates each such allegation herein as if set forth in full.

60. The Defendant, its employees, and agents, have entered onto Plaintiff's land, which has a title held in trust by the U.S. government, without her consent or authorization.

61. The actions of the Defendant, its employees, and agents, caused a road to be built and a creek bed to change course, among other activities, on Plaintiff's land, all which continue to cause substantial and unreasonable interference with the land, including pasture lands and riparian areas.

62. The conduct of the Defendant, its employees, and agents related to the activities described herein are offensive, inconvenient, and annoying to the Plaintiff.

63. The conduct of the Defendant, its employees, and agents, has directly interfered with Plaintiff's use and enjoyment of her land for several years with substantial damage resulting from activities on or about September, 2013.

64. The conduct of the Defendants, its employees, and agents, is severe and unreasonable and outweighs any potential utility gained by the Defendants from their conduct.

65. Damages for nuisance will be proven at trial.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter judgment in favor of Plaintiff against Defendant.
- B. Award Plaintiff all damages that are fair and just to fully restore property damage and riparian area.
- C. Award Plaintiff all damages in the amount of five million three hundred forty-nine thousand seven hundred forty four and no/100 dollars (\$5,349,744.00) or whatever amount is deemed necessary and appropriate to pay for removal of the unauthorized road, restoration of the ecological damage caused by the road, restoration of agricultural lands damaged by the road, restoration of the diverted water course, the cost of replacement of topsoil and other earthen materials lost as a result of construction or erosion, and all costs and damages associated with the tortuous conduct in this case, all of which is ongoing.
- D. Award Plaintiff the costs of the lawsuit and attorneys fees; and any other and further relief be provided that the Court considers proper.

Respectfully submitted this 20th day of March, 2015.

By: _____/s/
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