Gilham v. United States, ___ Fed. Cl. ___, 2023 WL 355650 (Jan. 23, 2023)

- **Holdings:** Tribal member failed to establish a money-mandating trust duty under the APA or Conservation Reserve Program contracts affecting reservation trust lands, and her Tucker Act claims were barred in part by the six-year limitation period in 28 U.S.C. § 2501.
- **Summary:** Plaintiff, a Blackfeet Tribe member, leased her reservation trust land in 2007 under two ten-year contracts in the Conservation Reserve Program administered by the Farm Service Agency. The Bureau of Indian Affairs co-signed the contract but as a "'0.00%' participant" in its trustee capacity. Under the contracts, Plaintiffs received CRP payments in return for carrying out specified duties. Because of domestic abuse and other difficulties, she failed to discharge those duties, and the contracts were terminated by the United States Department of Agriculture in 2015. Plaintiff sued the United States in 2022, asserting jurisdiction under the Tucker Act, 28 U.S.C. § 1491(a)(1). She alleged violations of the Administrative Procedure Act and further asserted "that '[t]he United States decision to do nothing to assist [the plaintiff] to maintain the CRP contracts in good standing was a clear breach of the trust and fiduciary duties it owed [the plaintiff] as an enrolled tribal member of the Blackfeet Tribe.'" The United States moved to dismiss for lack of subject-matter jurisdiction under RCFC 12(b)(1) because Plaintiff failed to identify a money-mandating statute or regulation and because her "claims are outside the Tucker Act's six-year statute of limitations[.]" *See* 28 U.S.C. § 2501.

  The court of claims granted the United States' motion. It made relatively short work of the contention that the APA constituted a money-mandating statute. "It is a well-settled conclusion that the APA is not a money-mandating statute over which the Court of Federal Claims can exercise jurisdiction under the Tucker Act[,]" pointing out that "[t]he Federal Circuit has ... emphasized that 'the APA does not authorize an award of money damages at all; to the contrary, [S]ection 10(a) of the APA, 5 U.S.C. § 702, specifically limits the Act to actions seeking relief other than money damages.'"

  As for the breach-of-trust claim, the court began by stressing that "[t]he general trust relationship between the defendant and Indians cannot alone support jurisdiction, and '[i]nstead, the analysis must train on specific rights-creating or duty-imposing statutory or regulatory prescriptions.'" Here,

  > the plaintiff's complaint relies solely on the CRP contracts between her and the USDA, and co-signed by the BIA, as the source for the alleged "trust and fiduciary duties [the defendant] owed [the plaintiff] as an enrolled tribal member of the Blackfeet Tribe." ... Although the plaintiff argues that the CRP contracts are a sufficient basis for jurisdiction under the Tucker Act, ... the plaintiff has not alleged a breach-of-contract claim[.] ... The plaintiff has not identified any statutory or regulatory source of the fiduciary responsibilities she ascribes to the BIA under the CRP contracts, explained how the CRP contracts alone can create fiduciary responsibilities, cited specific CRP contract provisions as the source of the alleged trust duties, or cited any authority that a contract can create enforceable Indian trust duties that would confer jurisdiction in the Court of Federal Claims over the plaintiff's breach-of-trust claim. ... [¶] Alternatively, even if a contract could create fiduciary duties enforceable under an Indian breach-of-trust claim, the plaintiff has failed to state a claim on which relief can be granted because on their face the CRP contracts do not create such duties.

The court added that "[i]t is undisputed that the BIA signed the CRP contracts as a 0% participant ... and that the CRP contracts incorporated terms stating that a 0% participant is not liable under a CRP contract[.]"

As for the statute-of-limitation issue, the court held that an APA-based claim "accrues when an agency has taken final action, which is dependent on 'whether the agency has completed its decision[-]making process, and whether the result of that process is one that will directly affect the parties.'" In this matter, "[e]ven assuming the BIA's failure to assist the plaintiff in performing the required maintenance on her land could constitute reviewable final agency action under the APA, that inaction occurred no later than November 2015." A breach-of-trust claim, in contrast, "'accrues when the trust beneficiary knew or should have known of the breach.'" But "[t]he plaintiff would have known of any breach of trust that occurred due to the BIA's lack of assistance with the CRP contract-required maintenance at the time she received notice of the termination of the CRP contracts or, at the latest, at the time contracts were terminated"—i.e., June 2016 by which at the latest her "counsel acknowledged during oral argument that the plaintiff became aware of the termination of the CRP contract[.]" The court did find that "the plaintiff's APA claim as to the BIA's failure to assist her in obtaining equitable relief from the USDA would be timely if the APA could support such a claim, which it cannot."

- **Relevant (2022) Deskbook Section:** 1:6 n.37