Lower Brule Sioux Tribe v. Haaland, ___ F. Supp. 3d ___, 2022 WL 4131194 (D.S.D. Sept. 12, 2022)

- **Holding:** Tribe's complaint alleging various claims against the Bureau of Indian Affairs with respect 2016 through 2018 Findings and Determinations Reports that, in the aggregate, questioned approximately $15.36 million in costs under a Tribally Controlled Schools Act self-determination contract was dismissed with leave to amend as to whether the BIA's collection or non-collection activities violated a particular trust duty.
- **Summary:** Plaintiff Tribe has entered into a self-determination contract with the BIA pursuant to the Indian Self-Determination and Education Assistance Act to carry out functions under the TCSA. For the period between (and including) the 2012 and 2019 fiscal years, the Tribe engaged in a practice of using earmarked TCSA funds as a form of borrowing to cover general fund shortfalls. The BIA countenanced this practice for fiscal years 2012 through 2015 but, beginning in fiscal year 2016, adopted the position that any such "'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.'" The Tribe had never followed this practice. As a result, the fiscal year 2016 Findings and Determinations Report under 25 U.S.C. § 2507(e) identified $6,122,556 in "questioned" costs. Fiscal year 2017 and 2018 Reports identified $3,679,223 and $3,552,860, respectively, in such costs. The Tribe did not contest these Reports either administratively with 90 days of their receipt or by filing suit in the court of federal claims or district court within 12 months after receipt as required under the Contract Disputes Act, 41 U.S.C. § 7104(a) & (b)(3). It did seek administrative review of the fiscal year 2019 Report, which found an unearned revenue deficit of $4,800,577, and that appeal is pending.

  In October 2021, the Tribe filed this suit directed to the fiscal year 2016-2018 Reports and the related federal agency conduct. As the district court explained, the complaint "can be fairly read to allege the following claims: (1) disputing the BIA's findings and determinations under 25 U.S.C. § 2507(e); (2) alleging a failure to provide technical assistance under 25 U.S.C. § 2505(c)(3); (3) detrimental reliance; (4) breach of trust; and (5) violation of due process and equal protection." Defendants moved to dismiss, and the court granted the motion with leave to amend the breach-of-trust claim.

  First, the court held that claim disputing the Reports themselves barred by the limitation periods in 41 U.S.C. § 7104. Second, it rejected the technical assistance claim because "[t]he Tribe has not shown, or even alleged, that it 'suffered an injury in fact that is actual or imminent, not conjectural or hypothetical' from Defendants' alleged failure to 'provide such technical assistance to enable the school and governing body to carry out such remedial actions.'" Third, "[t]he Tribe cite[d] no authority under which they bring this 'detrimental reliance' claim except for the Declaratory Judgment Act[,]" but that Act "'does not extend the jurisdiction of the federal district courts. ... It simply expands the range of remedies available in the federal courts.'" Fourth, the Tribe predicated the breach-of-trust claim on the 1868 Treaty of Fort Laramie and the Snyder Act and alleged "that [t]he Department of the Treasury has seized or diverted over $4,350,000 in federal funds from the Tribe, including almost $3,000,000 in federal funding earmarked for health services such as COVID prevention and ambulatory services, pursuant to the BIA's bills of collection." The Tribe, however, did not "allege that Defendants breached any

particular duty" under the Treaty or the Act. The court therefore granted dismissal "without prejudice to the Tribe amending its complaint if it can tether the collection or non-collection activities to a particular trust duty." Last, the due process and equal protection claims derived from the assertion that federal Defendants violated those rights of tribal members "by collecting debt and thus depriving the Tribe of money needed to support the Tribe's welfare without notice and a hearing." The court held the due process-violation claim unsupported because "the Tribe has not alleged it was denied a hearing pursuant to the provisions of the ISDEAA or that it requested but was denied such a hearing" and the equal protection claim similarly unsupported by the complaint's allegations.

- **Relevant (2022) Deskbook Section:** 1:13 n.41