Prima Exploration v. LaCounte, 2023 WL 7019928 (D.N.D., Oct. 25, 2023).

- **Holding**: Plaintiff, whose mineral lease on tribal lands was terminated and awarded to new lessees, was required to exhaust all administrative appeals prior to bringing action in federal court, notwithstanding allegations of unreasonable and unwarranted delay in deciding pending administrative appeals and allegations that the BIA failed to recognize Plaintiffs' lease and legal interests as valid and in full force and effect pending a final decision.
- **Summary**: Prima Exploration held a mineral leasehold interest to a 320 acre parcel on the Fort Berthold Indian Reservation. In 2013, the Superintendent of the BIA's Fort Berthold Agency declared 240 acres of the leasehold terminated, and approved a new lease of that same acreage to another energy company. In 2015, the BIA declared the remaining 80 acres terminated and approved a lease of that same acreage to Defendant PetroShale. Prima administratively appealed the decisions to segregate and terminate its lease, and also appealed the decisions to issue new leases to other energy companies. Disssatisfied with the progress of the administrative appeals, Prima also filed an action in federal court challenging the BIA's decisions, but such action was dismissed in 2018 for lack of subject matter jurisdiction due to Prima's failure to exhaust administrative remedies.

  In November 2018, the Regional Director of the BIA issued an opinion on one of Prima's four appeals, affirming the Superintendent's decision to segregate and partially terminate Prima's lease. Prima appealed the decision to the Interior Board of Indian Appeals (IBIA). The IBIA has yet to issue a decision on the appeals, and Prima's other three appeals remain before the Regional Director, pending a decision on the first appeal.

  Despite the pending administrative appeals, Prima once again filed an action in federal court, based on the same legal theories of its previously dismissed case, but seeking a writ of mandamus compelling the Department of the Interior, Secretary Haaland, the BIA, and the IBIA to act on Prima's administrative appeal, and seeking to enforce what Prima alleged was an automatic stay retaining Prima's leasehold interest pending a final decision on its administrative appeals. The federal defendants filed a motion to dismiss, as did Defendant Petroshale, Inc., which had been awarded one of the new leases.

  Treating the motions to dismiss as facial attacks on the court's jurisdiction, the court considered only the facts alleged n the complaint and its attached exhibits, and concluded that under 25 C.F.R. § 2.6, a BIA decision does not constitute a final agency action subject to judicial review if it may be appealed to a superior authority within the Department of the Interior. The court rejected Prima's allegations that the BIA's delay and conduct displayed bias and rendered further administrative appeals futile, citing a prior decision from the court (*Prima Expl., Inc v. LaCounte*, 2018 WL 4702153, *4 (D.N.D. Oct. 1, 2018) that exhaustion of administrative remedies was "required … even when delays on the part of the BIA were 'unreasonable' and 'unwarranted.'"

  Prima also alleged that 25 C.F.R. § 2.6(a), stating that a BIA decision does not constitute a final agency action subject to judicial review if it may be appealed to a superior authority within the DOI "unless the official to whom the appeal is made

determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately," imposed an "automatic stay" on BIA's decision to terminate its lease. The court, however, decided that § 706(1) only empowers courts to compel an agency to perform a ministerial or non-discretionary act, and here "there has been no decision by any BIA or IBIA official that immediate implementation of any BIA action is required due to public safety, protection of trust resources, or other public exigency. Therefore, there is no discrete agency action that the BIA is required to take."

- **Relevant (2023) Deskbook Section**: 3:9