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ATTORNEYS FOR DARRYL LaCOUNTE,  
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS

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

<p>EAGLE BEAR, INC.,</p> <p>Plaintiff.</p> <p>vs.</p> <p>BLACKFEET INDIAN NATION, and DARRYL LaCOUNTE, DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS,</p> <p>Defendants.</p>	<p>CV 22-93-GF-BMM</p> <p>BIA'S SUPPLEMENTAL BRIEF RE EFFECT OF WITHDRAWAL OF APPEAL</p>
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Pursuant to the Court's order dated October 4, 2023 (Doc. 117), the United States respectfully provides the Court with the following brief.

The United States, through the Bureau of Indian Affairs, is not a party to the lease subject of the dispute between Eagle Bear and the Blackfeet Nation. As the BIA is not a party to the lease, it takes no position as to its current status. Nor does BIA take a position as to how or whether the actions taken by Eagle Bear and the Blackfeet Nation affect the status of the Lease, including the filing or withdrawal of an appeal or subsequent conduct of the parties.

Count 1 of the operative complaint seeks only declaratory relief as to the legal effect of the actions taken or not taken by Eagle Bear, the Blackfeet Nation, and the BIA with respect to the 2008 lease cancellation. (Doc. 4.) BIA has responded to discovery, supplied documentary evidence, and facilitated deposition testimony of former BIA employees so Eagle Bear and the Blackfeet Nation could develop the facts to the extent possible for events that took place fifteen years ago. BIA will proceed according to the Court's decisions regarding the lease and its efficacy but, because no party asserted a recoverable claim against the BIA, the BIA's legal position in this litigation ends there.

Because it is not a party to the Lease, BIA takes no position as to whether the Lease was canceled or remains in effect. This position necessarily extends to any interpretation of the facts as applied to the applicable regulatory authority. The C.F.R. does not speak directly to a situation where an appealing party withdraws a notice of appeal, only to the failure to file an appeal and the decision making process

of an appeal. To aid the Court in its legal determination and narrow the vast C.F.R., the BIA submits that the following C.F.R. sections may apply:

1. C.F.R. Title 25, Chapter 1, Subchapter F, Part 162, Subpart F concerns Non-Agricultural leases. Three sections directly address lease cancellation:
  - a. 25 C.F.R. § 162.619 (2009) addresses actions BIA may take if a lease tenant does not cure lease violations.
  - b. 25 C.F.R. § 162.620 (2009) governs bonds for appeals of cancellations of a lease.
  - c. 25 C.F.R. § 162.621 (2009) provides the effective date and time periods for appeal of a cancellation decision for a lease.
2. C.F.R. Title 25, Chapter 1, Subchapter A, Part 2, addresses the process for administrative appeals.

The BIA has not issued a final decision regarding the 2008 lease cancellation letter. There is no pending appeal of any alleged inaction by the BIA. The 2017 appeal (remanded by the Interior Board of Indian Appeals back to the BIA Regional Director) remains outstanding without a final decision given the bankruptcy stay and the instant litigation. The current litigation has removed the question of the lease cancellation from the administrative realm and the BIA is not in a position to form a position or an opinion as to the effect of the appeal withdrawal.

DATED: October 12, 2023.

**JESSE A. LASLOVICH**  
UNITED STATES ATTORNEY

/s/ Lynsey Ross  
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Assistant U.S. Attorney  
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2)(E), the attached brief is proportionately spaced, has a typeface of 14 points and contains 535 words, excluding the caption and certificate compliance, and is less than 10 pages.

/s/ Lynsey Ross  
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